

FIRST REGULAR SESSION  
HOUSE COMMITTEE SUBSTITUTE FOR  
SENATE SUBSTITUTE FOR  
SENATE SUBSTITUTE FOR  
SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE BILL NOS. 556 & 311**  
**92ND GENERAL ASSEMBLY**

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Reported from the Special Committee on General Laws, April 24, 2003, with recommendation that the House Committee Substitute for Senate Substitute for Senate Committee Substitute for Senate Bill Nos. 556 & 311 Do Pass.

STEPHEN S. DAVIS, Chief Clerk

0569L.32C

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**AN ACT**

To repeal sections 197.725, 198.006, 198.015, 198.022, 198.032, 198.036, 198.067, 198.070, 198.082, 198.085, 198.086, 198.093, 198.105, 198.525, 198.526, 198.532, 565.186, 565.188, 570.145, 630.140, 630.165, 630.167, 660.078, 660.250, 660.261, 660.270, 660.300, 660.305, 660.315, 660.317, 660.320, and 660.603, RSMo, and to enact in lieu thereof forty-five new sections relating to the protection of the elderly, with penalty provisions and an emergency clause for a certain section.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Sections 197.725, 198.006, 198.015, 198.022, 198.032, 198.036, 198.067, 198.070, 198.082, 198.085, 198.086, 198.093, 198.105, 198.525, 198.526, 198.532, 565.186, 565.188, 570.145, 630.140, 630.165, 630.167, 660.078, 660.250, 660.261, 660.270, 660.300, 660.305, 660.315, 660.317, 660.320, and 660.603, RSMo, are repealed and forty-five new sections enacted in lieu thereof, to be known as sections 197.416, 197.478, 197.500, 198.006, 198.015, 198.022, 198.027, 198.030, 198.032, 198.036, 198.066, 198.067, 198.070, 198.071, 198.082, 198.085, 198.086, 198.093, 198.105, 198.301, 198.428, 198.525, 198.526, 198.528, 198.532, 198.600, 208.225, 565.186, 565.188, 570.145, 630.140, 630.165, 630.167, 660.078, 660.250, 660.261, 660.270, 660.300, 660.305, 660.310, 660.315, 660.317, 660.320, 660.321, and 660.603 to read as follows:

**EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law. Matter in boldface type in the above law is proposed language.**

197.416. Whenever the department is inspecting a home health agency in response to an application from an applicant located outside of Missouri not previously licensed by the department, the department may request from the applicant the past five years compliance history of all home health agencies owned by the applicant located outside of this state.

197.478. 1. The department of health and senior services shall provide through their Internet web site:

(1) The most recent survey of all home health agencies and any such findings of deficiencies and the effect the deficiency would have on such agencies. If such survey is in dispute, the survey shall not be posted on the web site until the agency's dispute has been resolved and the department shall, upon request of the home health agency, post the agency's response;

(2) The home health agency's proposed plan of correction;

(3) A link to the federal web site that provides a summary of home health agency surveys conducted over the last three years; and

(4) Information on how to obtain a copy of a complete home health agency survey conducted over the last three years.

2. Nothing in this section shall be construed as requiring the department to post any information on its Internet web site that is prohibited from disclosure pursuant to the federal Health Insurance Portability and Accountability Act, as amended.

197.500. 1. The department shall maintain an employee disqualification list and place on the employee disqualification list the names of any persons who are or who have been employed by any entity licensed pursuant to this chapter and who have been finally determined by the department pursuant to section 660.315, RSMo, to have knowingly or recklessly abused or neglected a patient. For the purpose of this section, "abuse" and "neglect" shall have the same meanings as such terms are defined in section 198.006, RSMo, and "knowingly" and "recklessly" shall have the same meanings as such terms are defined in section 562.016, RSMo.

2. The department shall compile and maintain an employee disqualification list in the same manner as the employee disqualification list compiled and maintained by the department pursuant to section 660.315, RSMo.

198.006. As used in sections 198.003 to 198.186, unless the context clearly indicates otherwise, the following terms mean:

(1) "Abuse", the infliction of physical, sexual, or emotional injury or harm;

(2) "Administrator", the person who is in general administrative charge of a facility;

(3) "Affiliate":

- 17 (a) With respect to a partnership, each partner thereof;
- 18 (b) With respect to a limited partnership, the general partner and each limited partner  
19 with an interest of five percent or more in the limited partnership;
- 20 (c) With respect to a corporation, each person who owns, holds or has the power to vote,  
21 five percent or more of any class of securities issued by the corporation, and each officer and  
22 director;
- 23 (d) With respect to a natural person, any parent, child, sibling, or spouse of that person;
- 24 (4) "Department", the Missouri department of [social services] **health and senior**  
25 **services**;
- 26 (5) "Emergency", a situation, physical condition or one or more practices, methods or  
27 operations which presents imminent danger of death or serious physical or mental harm to  
28 residents of a facility;
- 29 (6) "Facility", any residential care facility I, residential care facility II, immediate care  
30 facility, or skilled nursing facility;
- 31 (7) "Health care provider", any person providing health care services or goods to  
32 residents and who receives funds in payment for such goods or services under Medicaid;
- 33 (8) "Intermediate care facility", any premises, other than a residential care facility I,  
34 residential care facility II, or skilled nursing facility, which is utilized by its owner, operator, or  
35 manager to provide twenty-four hour accommodation, board, personal care, and basic health and  
36 nursing care services under the daily supervision of a licensed nurse and under the direction of  
37 a licensed physician to three or more residents dependent for care and supervision and who are  
38 not related within the fourth degree of consanguinity or affinity to the owner, operator or  
39 manager of the facility;
- 40 (9) "Manager", any person other than the administrator of a facility who contracts or  
41 otherwise agrees with an owner or operator to supervise the general operation of a facility,  
42 providing such services as hiring and training personnel, purchasing supplies, keeping financial  
43 records, and making reports;
- 44 (10) "Medicaid", medical assistance under section 208.151, RSMo, et seq., in  
45 compliance with Title XIX, Public Law 89-97, 1965 amendments to the Social Security Act (42  
46 U.S.C. 301 et seq.), as amended;
- 47 (11) "Neglect", the failure to provide, by those responsible for the care, custody, and  
48 control of a resident in a facility, the services which are reasonable and necessary to maintain the  
49 physical and mental health of the resident, when such failure presents either an imminent danger  
50 to the health, safety or welfare of the resident or a substantial probability that death or serious  
51 physical harm would result;
- 52 (12) "Operator", any person licensed or required to be licensed under the provisions of

53 sections 198.003 to 198.096 in order to establish, conduct or maintain a facility;

54 (13) "Owner", any person who owns an interest of five percent or more in:

55 (a) The land on which any facility is located;

56 (b) The structure or structures in which any facility is located;

57 (c) Any mortgage, contract for deed, or other obligation secured in whole or in part by  
58 the land or structure in or on which a facility is located; or

59 (d) Any lease or sublease of the land or structure in or on which a facility is located.

60 "Owner" does not include a holder of a debenture or bond purchased at public issue nor does it  
61 include any regulated lender unless the entity or person directly or through a subsidiary operates  
62 a facility;

63 (14) "Resident", a person who by reason of aging, illness, disease, or physical or mental  
64 infirmity receives or requires care and services furnished by a facility and who resides or boards  
65 in or is otherwise kept, cared for, treated or accommodated in such facility for a period exceeding  
66 twenty-four consecutive hours;

67 (15) "Residential care facility I", any premises, other than a residential care facility II,  
68 intermediate care facility, or skilled nursing facility, which is utilized by its owner, operator or  
69 manager to provide twenty-four hour care to three or more residents, who are not related within  
70 the fourth degree of consanguinity or affinity to the owner, operator, or manager of the facility  
71 and who need or are provided with shelter, board, and with protective oversight, which may  
72 include storage and distribution or administration of medications and care during short-term  
73 illness or recuperation;

74 (16) "Residential care facility II", any premises, other than a residential care facility I,  
75 an intermediate care facility, or a skilled nursing facility, which is utilized by its owner, operator  
76 or manager to provide twenty-four hour accommodation, board, and care to three or more  
77 residents who are not related within the fourth degree of consanguinity or affinity to the owner,  
78 operator, or manager of the facility, and who need or are provided with supervision of diets,  
79 assistance in personal care, storage and distribution or administration of medications, supervision  
80 of health care under the direction of a licensed physician, and protective oversight, including care  
81 during short-term illness or recuperation;

82 (17) "Skilled nursing facility", any premises, other than a residential care facility I, a  
83 residential care facility II, or an intermediate care facility, which is utilized by its owner, operator  
84 or manager to provide for twenty-four hour accommodation, board and skilled nursing care and  
85 treatment services to at least three residents who are not related within the fourth degree of  
86 consanguinity or affinity to the owner, operator or manager of the facility. Skilled nursing care  
87 and treatment services are those services commonly performed by or under the supervision of  
88 a registered professional nurse for individuals requiring twenty-four hours a day care by licensed

89 nursing personnel including acts of observation, care and counsel of the aged, ill, injured or  
90 infirm, the administration of medications and treatments as prescribed by a licensed physician  
91 or dentist, and other nursing functions requiring substantial specialized judgment and skill;

92 (18) "Vendor", any person selling goods or services to a health care provider.

198.015. 1. No person shall establish, conduct or maintain a residential care facility I,  
2 residential care facility II, intermediate care facility, or skilled nursing facility in this state  
3 without a valid license issued by the department. Any person violating this subsection is guilty  
4 of a class A misdemeanor. **Any person violating this subsection wherein abuse or neglect**  
5 **of a resident or occupant of the premises has occurred is guilty of a class D felony. The**  
6 **department of health and senior services shall investigate any complaint concerning any**  
7 **person operating unlicensed premises within twenty-four hours of receiving such**  
8 **complaint. By January 1, 2004, the department shall promulgate rules to establish**  
9 **procedures to assure compliance with this section. Such rules shall include, but not be**  
10 **limited to:**

11 (1) A process to identify unlicensed premises;

12 (2) An annual on-site review of any unlicensed premises offering services to more  
13 than thirty residents, unless such unlicensed premises is on the immediate campus of a  
14 person that possesses a valid license for a residential care facility I, residential care facility  
15 II, intermediate care facility, or skilled nursing facility;

16 (3) Complaint handling;

17 (4) Reporting and publication of the results of complaint investigations sufficient  
18 to alert the public of the unlicensed premises and its violation of law; and

19 (5) Identification of residents who, when admitted to properly licensed facilities,  
20 needed protective oversight. If during or from its investigation of any unlicensed premises  
21 the department finds that a resident or occupant on such premises requires protective  
22 oversight, the department shall immediately notify the attorney general's office. The  
23 attorney general and the department shall, in accordance with sections 198.067 and  
24 198.070, take the necessary actions to protect the residents or occupants of the unlicensed  
25 premises and to prevent violations from recurring.

26 2. Each license shall be issued only for the premises and persons named in the  
27 application. A license, unless sooner revoked, shall be issued for a period of up to two years, in  
28 order to coordinate licensure with certification in accordance with section 198.045.

29 3. If during the period in which a license is in effect, a licensed operator which is a  
30 partnership, limited partnership, or corporation undergoes any of the following changes, or a new  
31 corporation, partnership, limited partnership or other entity assumes operation of a facility  
32 whether by one or by more than one action, the current operator shall notify the department of

33 the intent to change operators and the succeeding operator shall within ten working days of such  
34 change apply for a new license:

35 (1) With respect to a partnership, a change in the majority interest of general partners;

36 (2) With respect to a limited partnership, a change in the general partner or in the  
37 majority interest of limited partners;

38 (3) With respect to a corporation, a change in the persons who own, hold or have the  
39 power to vote the majority of any class of securities issued by the corporation.

40 4. Licenses shall be posted in a conspicuous place on the licensed premises.

41 5. Any license granted shall state the maximum resident capacity for which granted, the  
42 person or persons to whom granted, the date, the expiration date, and such additional information  
43 and special limitations as the department by rule may require.

44 6. The department shall notify the operator at least sixty days prior to the expiration of  
45 an existing license of the date that the license application is due. Application for a license shall  
46 be made to the department at least thirty days prior to the expiration of any existing license.

47 7. The department shall grant an operator a temporary operating permit in order to allow  
48 for state review of the application and inspection for the purposes of relicensure if the application  
49 review and inspection process has not been completed prior to the expiration of a license and the  
50 operator is not at fault for the failure to complete the application review and inspection process.

51 8. The department shall grant an operator a temporary operating permit of sufficient  
52 duration to allow the department to evaluate any application for a license submitted as a result  
53 of any change of operator.

198.022. 1. Upon receipt of an application for a license to operate a facility, the  
2 department shall review the application, investigate the applicant and the statements sworn to  
3 in the application for license and conduct any necessary inspections. A license shall be issued  
4 if the following requirements are met:

5 (1) The statements in the application are true and correct;

6 (2) The facility and the operator are in substantial compliance with the provisions of  
7 sections 198.003 to 198.096 and the standards established thereunder;

8 (3) The applicant has the financial capacity to operate the facility;

9 (4) The administrator of a residential care facility II, a skilled nursing facility, or an  
10 intermediate care facility is currently licensed under the provisions of chapter 344, RSMo;

11 (5) Neither the operator nor any principals in the operation of the facility have ever been  
12 convicted of a felony offense concerning the operation of a long-term health care facility or other  
13 health care facility or ever knowingly acted or knowingly failed to perform any duty which  
14 materially and adversely affected the health, safety, welfare or property of a resident, while acting  
15 in a management capacity. The operator of the facility or any principal in the operation of the

16 facility shall not be under exclusion from participation in the title XVIII (Medicare) or title XIX  
17 (Medicaid) program of any state or territory;

18 (6) Neither the operator nor any principals involved in the operation of the facility have  
19 ever been convicted of a felony in any state or federal court arising out of conduct involving  
20 either management of a long-term care facility or the provision or receipt of health care;

21 (7) All fees due to the state have been paid.

22 2. Upon denial of any application for a license, the department shall so notify the  
23 applicant in writing, setting forth therein the reasons and grounds for denial.

24 3. The department may inspect any facility and any records and may make copies of  
25 records, at the facility, at the department's own expense, required to be maintained by sections  
26 198.003 to 198.096 or by the rules and regulations promulgated thereunder at any time if a  
27 license has been issued to or an application for a license has been filed by the operator of such  
28 facility. **Copies of any records requested by the department shall be prepared by the staff**  
29 **of such facility within two business days or as determined by the department. The**  
30 **department shall not remove or disassemble any medical record during any inspection of**  
31 **the facility, but may observe the photocopying or may make its own copies if the facility**  
32 **does not have the technology to make the copies. In accordance with the provisions of**  
33 **section 198.525,** the department shall make at least two inspections per year, at least one of  
34 which shall be unannounced to the operator. The department may make such other inspections,  
35 announced or unannounced, as it deems necessary to carry out the provisions of sections 198.003  
36 to 198.136.

37 4. Whenever the department has reasonable grounds to believe that a facility required  
38 to be licensed under sections 198.003 to 198.096 is operating without a license, and the  
39 department is not permitted access to inspect the facility, or when a licensed operator refuses to  
40 permit access to the department to inspect the facility, the department shall apply to the circuit  
41 court of the county in which the premises is located for an order authorizing entry for such  
42 inspection, and the court shall issue the order if it finds reasonable grounds for inspection or if  
43 it finds that a licensed operator has refused to permit the department access to inspect the facility.

44 **5. Whenever the department is inspecting a facility in response to an application**  
45 **from an operator located outside of Missouri not previously licensed by the department,**  
46 **the department may request from the applicant the past five years compliance history of**  
47 **all facilities owned by the applicant located outside of this state.**

**198.027. If a facility submits satisfactory documentation that establishes correction**  
2 **of any deficiency contained within the written report of deficiency required by section**  
3 **198.026, an on-site revisit of such deficiency may not be required.**

**198.030. Every residential care facility I, residential care facility II, intermediate**

2 **care facility, and skilled nursing facility shall post the most recent inspection report of the**  
3 **facility in a conspicuous place. If the operator determines that the inspection report of the**  
4 **facility contains individually identifiable health information, the operator may redact such**  
5 **information prior to posting the inspection report.**

198.032. 1. Nothing contained in sections 198.003 to 198.186 shall permit the public  
2 disclosure by the department of confidential medical, social, personal or financial records of any  
3 resident in any facility, except when disclosed in a manner which does not identify any resident,  
4 or when ordered to do so by a court of competent jurisdiction. Such records shall be accessible  
5 without court order for examination and copying only to the following persons or offices, or to  
6 their designees:

7 (1) The department or any person or agency designated by the department;

8 (2) The attorney general;

9 (3) The department of mental health for residents placed through that department;

10 (4) Any appropriate law enforcement agency;

11 (5) The resident, [his] **the resident's** guardian, or any other person designated by the  
12 resident; and

13 (6) Appropriate committees of the general assembly and the state auditor, but only to the  
14 extent of financial records which the operator is required to maintain pursuant to sections  
15 198.088 and 198.090.

16 2. Inspection reports and written reports of investigations of complaints, of substantiated  
17 reports of abuse and neglect received in accordance with section 198.070, and complaints  
18 received by the department relating to the quality of care of facility residents, shall be accessible  
19 to the public for examination and copying, provided that such reports are disclosed in a manner  
20 which does not identify the complainant or any particular resident. Records and reports shall  
21 clearly show what steps the department and the institution are taking to resolve problems  
22 indicated in said inspections, reports and complaints.

23 3. The department shall maintain a central registry capable of receiving and maintaining  
24 reports received in a manner that facilitates rapid access and recall of the information reported,  
25 and of subsequent investigations and other relevant information. The department shall  
26 electronically record **and maintain a hotline caller log for the reporting of suspected abuse**  
27 **and neglect in long-term care facilities.** Any telephone report of suspected abuse and neglect  
28 received by the department and such recorded reports shall be retained by the department for a  
29 period of one year after recording. **The department shall in all cases attempt to obtain the**  
30 **name of any person making a report after obtaining relevant information regarding the**  
31 **alleged abuse or neglect. The department shall also attempt to obtain the address of any**  
32 **person making a report. The identity of the person making the report shall remain**



33 **confidential.**

34 [4. Although reports to the central registry may be made anonymously, the department  
35 shall in all cases, after obtaining relevant information regarding the alleged abuse or neglect,  
36 attempt to obtain the name and address of any person making a report.]

198.036. 1. The department may revoke a license in any case in which it finds that [the  
2 operator]:

3 (1) **The operator** failed or refused to comply with class I or II standards, as established  
4 by the department pursuant to section 198.085; or failed or refused to comply with class III  
5 standards as established by the department pursuant to section 198.085, where the aggregate  
6 effect of such noncompliances presents either an imminent danger to the health, safety or welfare  
7 of any resident or a substantial probability that death or serious physical harm would result;

8 (2) **The operator** refused to allow representatives of the department to inspect the  
9 facility for compliance with standards **or denied representatives of the department access to**  
10 **residents and employees necessary to carry out the duties set forth in this chapter and rules**  
11 **promulgated thereunder, except where employees of the facility are in the process of**  
12 **rendering immediate care to a resident of such facility;**

13 (3) **The operator** knowingly acted or knowingly omitted any duty in a manner which  
14 would materially and adversely affect the health, safety, welfare or property of a resident; [or]

15 (4) **The operator** demonstrated financial incapacity to operate and conduct the facility  
16 in accordance with the provisions of sections 198.003 to 198.096[.];

17 (5) **The operator or any principals in the operation of the facility have ever been**  
18 **convicted of a felony offense concerning the operation of a long-term health care facility**  
19 **or other health care facility, or ever knowingly acted or knowingly failed to perform any**  
20 **duty which materially and adversely affected the health, safety, welfare, or property of a**  
21 **resident while acting in a management capacity. The operator of the facility or any**  
22 **principal in the operation of the facility shall not be under exclusion from participation in**  
23 **the Title XVIII (Medicare) or Title XIX (Medicaid) program of any state or territory; or**

24 (6) **The operator or any principals involved in the operation of the facility have ever**  
25 **been convicted of or pled guilty or nolo contendere to a felony in any state or federal court**  
26 **arising out of conduct involving either management of a long-term care facility or the**  
27 **provision or receipt of health care.**

28 2. **Nothing in subdivision (2) of subsection 1 of this section shall be construed as**  
29 **allowing the department access to information not necessary to carry out the duties set**  
30 **forth in sections 198.006 to 198.186.**

31 3. Upon revocation of a license, the director of the department shall so notify the  
32 operator in writing, setting forth the reason and grounds for the revocation. Notice of such

33 revocation shall be sent either by certified mail, return receipt requested, to the operator at the  
34 address of the facility, or served personally upon the operator. The department shall provide the  
35 operator notice of such revocation at least ten days prior to its effective date.

**198.066. To encourage compliance with the provisions of this chapter and any rules  
2 promulgated thereto, the department of health and senior services shall impose sanctions  
3 commensurate with the seriousness of the violation which occurred. For class I, II, or III  
4 violations, the following remedies may be imposed:**

- 5 **(1) A plan of correction;**
- 6 **(2) Additional directed staff training;**
- 7 **(3) State monitoring;**
- 8 **(4) A directed plan of correction;**
- 9 **(5) Denial of payment for new Medicaid admissions;**
- 10 **(6) A probationary license and consent agreement as described in section 198.026;**
- 11 **(7) Recovery of civil monetary penalties pursuant to section 198.067;**
- 12 **(8) Denial of payment for all new admissions;**
- 13 **(9) Receivership pursuant to section 198.105; or**
- 14 **(10) License revocation.**

198.067. 1. An action may be brought by the department, or by the attorney general on  
2 his or her own volition or at the request of the department or any other appropriate state agency,  
3 to temporarily or permanently enjoin or restrain any violation of sections 198.003 to 198.096,  
4 to enjoin the acceptance of new residents until substantial compliance with sections 198.003 to  
5 198.096 is achieved, or to enjoin any specific action or practice of the facility. Any action  
6 brought pursuant to the provisions of this section shall be placed at the head of the docket by the  
7 court, and the court shall hold a hearing on any action brought pursuant to the provisions of this  
8 section no less than fifteen days after the filing of the action.

9 2. The department may bring an action in circuit court to recover a civil penalty against  
10 the licensed operator of the facility as provided by this section. Such action shall be brought in  
11 the circuit court for the county in which the facility is located. The circuit court shall determine  
12 the amount of penalty to be assessed within the limits set out in this section. Appeals may be  
13 taken from the judgment of the circuit court as in other civil cases.

14 3. The operator of any facility which has been cited with a violation of sections 198.003  
15 to 198.096 or the regulations established pursuant thereto, or of subsection (b), (c), or (d) of  
16 Section 1396r of Title 42 of the United States Code or the regulations established pursuant  
17 thereto, is liable to the state for civil penalties of up to [ten] **twenty-five** thousand dollars for  
18 each day that the violations existed or continue to exist. Violations shall be presumed to  
19 continue to exist from the time they are found until the time the [division of aging] **department**

20 **of health and senior services** finds them to have been corrected. **When applicable**, the amount  
21 of the penalty shall be determined as follows:

22 (1) For each violation of a class I standard **when applicable pursuant to subdivision**  
23 **(6) of this subsection**, not less than one [hundred fifty] **thousand** dollars nor more than [one]  
24 **ten** thousand dollars;

25 (2) For each violation of a class II standard, not less than **two hundred** fifty dollars nor  
26 more than [five hundred] **one thousand** dollars;

27 (3) For each violation of a class III standard, not less than [fifteen dollars] **fifty dollars**  
28 nor more than [one] **two** hundred fifty dollars;

29 (4) For each violation of a federal standard which does not also constitute a violation of  
30 a state law or regulation, not less than two hundred fifty dollars nor more than five hundred  
31 dollars;

32 (5) For each specific class I violation by the same operator **at a particular facility** which  
33 has been **previously** cited within the past twenty-four months and for each specific class II or  
34 III violation by the same operator **at a particular facility** which has been **previously** cited  
35 within the past twelve months, double the amount last imposed;

36 **(6) In accordance with the provisions of this section, if the department imposes a**  
37 **civil monetary penalty for a class I violation, the liability for such penalty shall be incurred**  
38 **immediately upon the imposition of the penalty for the violation regardless of any**  
39 **subsequent correction of the violation by the facility. For class II or III violations, if the**  
40 **department imposes a civil monetary penalty, the liability for such penalty shall be**  
41 **incurred if a breach of a specific state or federal standard or statute remains uncorrected**  
42 **and not in accord with the accepted plan of correction at the time of the reinspection**  
43 **conducted pursuant to subsection 3 of section 198.026 or the regulations established**  
44 **pursuant to Title 42 of the United States Code.**

45

46 [As used in this subdivision the term "violation" shall mean a breach of a specific state or federal  
47 standard or statute which remains uncorrected and not in accord with the accepted plan of  
48 correction at the time of the reinspection conducted pursuant to subsection 3 of section 198.026  
49 or the regulations established pursuant to Title 42 of the United States Code.] A judgment  
50 rendered against the operator of a facility pursuant to this subsection shall bear interest as  
51 provided in subsection 1 of section 408.040, RSMo.

52 4. Any individual who willfully and knowingly certifies pursuant to subsection  
53 (b)(3)(B)(i) of Section 1396r of Title 42 of the United States Code a material and false statement  
54 in a resident assessment is subject to a civil penalty of not more than one thousand dollars with  
55 respect to each assessment. Any individual who willfully and knowingly causes another

56 individual to certify pursuant to subsection (b)(3)(B)(i) of Section 1396r of Title 42 of the United  
57 States Code a material and false statement in a resident assessment is subject to a civil penalty  
58 of not more than five thousand dollars with respect to each assessment.

59 5. The imposition of any remedy provided for in sections 198.003 to 198.186 shall not  
60 bar the imposition of any other remedy.

61 6. **Twenty-five percent of the** penalties collected pursuant to this section shall be  
62 deposited in the [division of aging] elderly home-delivered meals trust fund as established in  
63 section 660.078, RSMo. **Twenty-five percent of the penalties collected pursuant to this**  
64 **section shall be deposited in the nursing facility quality of care fund established in section**  
65 **198.418 to be used for the sole purpose of supporting quality care improvement projects**  
66 **within the office of state ombudsman for long-term care facility residents, established**  
67 **pursuant to section 660.603, RSMo. The remaining fifty percent of the penalties collected**  
68 **pursuant to this section shall be deposited into the nursing facility quality of care fund to**  
69 **be used by the department for the sole purpose of developing a program to assist qualified**  
70 **nursing facilities to improve the quality of service to their residents. The director of the**  
71 **department shall, by rule, develop a definition of qualified facilities and shall establish**  
72 **procedures for the selection of qualified facilities.** Such penalties shall not be considered a  
73 charitable contribution for tax purposes.

74 7. To recover any civil penalty, the moving party shall prove by clear and convincing  
75 evidence that the violation occurred.

76 8. The licensed operator of a facility against whom an action to recover a civil penalty  
77 is brought pursuant to this section may confess judgment as provided in section 511.070, RSMo,  
78 at any time prior to hearing. If such licensed operator agrees to confess judgment, the amount  
79 of the civil penalty recommended by the moving party in its petition shall be reduced by  
80 twenty-five percent and the confessed judgment shall be entered by the circuit court at the  
81 reduced amount.

82 9. The amount of any civil penalty assessed by the circuit court pursuant to this section  
83 shall be reduced by the amount of any civil monetary penalty which the licensed operator of the  
84 facility may establish it has paid pursuant to the laws of the United States for the breach of the  
85 same federal standards for which the state action is brought.

86 10. In addition to the civil penalties specified in subdivision (1) of subsection 3 of this  
87 section, any facility which is cited with a violation of a class I standard pursuant to subsection  
88 1 of section 198.085, when such violation results in serious physical injury or abuse of a sexual  
89 nature pursuant to subdivision (1) of section 198.006, to any resident of that facility shall be  
90 liable to the state for a civil penalty of one hundred dollars multiplied by the number of beds  
91 licensed to the facility, up to a maximum of ten thousand dollars pursuant to [subsections 1 and

92 2] **subsection 3** of this section. The liability of the facility for civil penalties pursuant to this  
93 section shall be incurred immediately upon the citation of the violation and shall not be affected  
94 by any subsequent correction of the violation. For the purposes of this section, "serious physical  
95 injury" means physical injury that creates a substantial risk of death or that causes serious  
96 disfigurement or protracted loss or impairment of the function of any part of the body.

97 **11. The department shall not impose a fine for self-reporting class II and class III**  
98 **violations so long as each violation is corrected within a specified period of time as**  
99 **determined by the department and there is no reoccurrence of the particular violation for**  
100 **twelve months following the date of the first self-reporting.**

101 **12. If a facility is sold or changes its operator, any civil penalty assessed shall not**  
102 **be sold, transferred, or otherwise assigned to the successor operator but shall remain the**  
103 **sole liability of the operator at the time of the violation.**

198.070. 1. When any [physician, dentist, chiropractor, optometrist, podiatrist, intern,  
2 nurse, medical examiner, social worker, psychologist, minister, Christian Science practitioner,  
3 peace officer, pharmacist, physical therapist, facility administrator, employee in a facility, or  
4 employee of the department of social services or of the department of mental health, coroner,  
5 dentist, hospital and clinic personnel engaged in examination, other health practitioners, mental  
6 health professional, adult day care worker, probation or parole officer, law enforcement official]  
7 **adult day care worker; chiropractor; Christian Science practitioner; coroner; dentist;**  
8 **embalmer; employee of the departments of social services, mental health, or health and**  
9 **senior services; employee of a local area agency on aging or an organized area agency on**  
10 **aging program; funeral director; home health agency or home health agency employee;**  
11 **hospital and clinic personnel engaged in examination, care, or treatment of persons; in-**  
12 **home services owner, provider, operator, or employee; law enforcement officer; long-term**  
13 **care facility administrator or employee; medical examiner; medical resident or intern;**  
14 **mental health professional; minister; nurse; nurse practitioner; optometrist; other health**  
15 **practitioner; peace officer; pharmacist; physical therapist; physician; physician's assistant;**  
16 **podiatrist; probation or parole officer; psychologist; social worker; or other person with the**  
17 **care of a person sixty years of age or older or an eligible adult has reasonable cause to believe**  
18 **that a resident of a facility has been abused or neglected, he or she shall immediately report or**  
19 **cause a report to be made to the department.**

20 2. The report shall contain the name and address of the facility, the name of the resident,  
21 information regarding the nature of the abuse or neglect, the name of the complainant, and any  
22 other information which might be helpful in an investigation.

23 3. Any person required in subsection 1 of this section to report or cause a report to be  
24 made to the department who knowingly fails to make a report within a reasonable time after the

25 act of abuse or neglect as required in this subsection is guilty of a class A misdemeanor.

26       4. **In addition to the penalties imposed by this section, any administrator who**  
27 **knowingly conceals any act of abuse or neglect resulting in death or serious physical injury,**  
28 **as defined in section 565.002, RSMo, is guilty of a class D felony.**

29       5. In addition to those persons required to report pursuant to subsection 1 of this section,  
30 any other person having reasonable cause to believe that a resident has been abused or neglected  
31 may report such information to the department.

32       [5.] 6. Upon receipt of a report, the department shall initiate an investigation within  
33 twenty-four hours and, as soon as possible during the course of the investigation, shall notify the  
34 resident's next of kin or responsible party of the report and the investigation and further notify  
35 them whether the report was substantiated or unsubstantiated **unless such person is the alleged**  
36 **perpetrator of the abuse or neglect.** As provided in section 565.186, RSMo, substantiated  
37 reports of elder abuse shall be promptly reported by the department to the appropriate law  
38 enforcement agency and prosecutor.

39       [6.] 7. If the investigation indicates possible abuse or neglect of a resident, the  
40 investigator shall refer the complaint together with the investigator's report to the department  
41 director or the director's designee for appropriate action. If, during the investigation or at its  
42 completion, the department has reasonable cause to believe that immediate removal is necessary  
43 to protect the resident from abuse or neglect, the department or the local prosecuting attorney  
44 may, or the attorney general upon request of the department shall, file a petition for temporary  
45 care and protection of the resident in a circuit court of competent jurisdiction. The circuit court  
46 in which the petition is filed shall have equitable jurisdiction to issue an ex parte order granting  
47 the department authority for the temporary care and protection of the resident, for a period not  
48 to exceed thirty days.

49       [7.] 8. Reports shall be confidential, as provided pursuant to section 660.320, RSMo.

50       [8.] 9. Anyone, **except any person who has abused or neglected a resident in a**  
51 **facility,** who makes a report pursuant to this section or who testifies in any administrative or  
52 judicial proceeding arising from the report shall be immune from any civil or criminal liability  
53 for making such a report or for testifying except for liability for perjury, unless such person acted  
54 **negligently, recklessly,** in bad faith or with malicious purpose. It is a crime pursuant to section  
55 565.186 and 565.188, RSMo, for any person to purposely file a false report of elder abuse or  
56 neglect.

57       [9.] 10. Within five working days after a report required to be made pursuant to this  
58 section is received, the person making the report shall be notified in writing of its receipt and of  
59 the initiation of the investigation.

60       [10.] 11. No person who directs or exercises any authority in a facility shall evict, harass,

61 dismiss or retaliate against a resident or employee because such resident or employee or any  
62 member of such resident's or employee's family has made a report of any violation or suspected  
63 violation of laws, ordinances or regulations applying to the facility which the resident, the  
64 resident's family or an employee has reasonable cause to believe has been committed or has  
65 occurred. Through the existing [division of aging] **department** information and referral  
66 telephone contact line, residents, their families and employees of a facility shall be able to obtain  
67 information about their rights, protections and options in cases of eviction, harassment, dismissal  
68 or retaliation due to a report being made pursuant to this section.

69 [11.] **12.** Any person who [knowingly] abuses or neglects a resident of a facility [shall  
70 be guilty of a class D felony] **is subject to criminal prosecution under section 565.180,**  
71 **565.182, or 565.184, RSMo.**

72 [12.] **13.** The department shall maintain the employee disqualification list and place on  
73 the employee disqualification list the names of any persons who **are or have been employed in**  
74 **any facility and who have been** finally determined by the department pursuant to section  
75 660.315, RSMo, to have [recklessly, knowingly or purposely abused or neglected a resident  
76 while employed in any facility] **knowingly or recklessly abused or neglected a resident. For**  
77 **purposes of this subsection, "knowingly" and "recklessly" shall have the same meanings**  
78 **as such terms are defined in section 562.016, RSMo.**

79 [13.] **14.** The timely self-reporting of incidents to the central registry by a facility shall  
80 continue to be investigated in accordance with department policy, and shall not be counted or  
81 reported by the department as a hot-line call but rather a self-reported incident. If the  
82 self-reported incident results in a regulatory violation, such incident shall be reported as a  
83 substantiated report.

**198.071. The staff of a residential care facility I, a residential care facility II, an**  
2 **intermediate care facility, or a skilled nursing facility shall attempt to contact the resident's**  
3 **immediate family or a resident's responsible party, and shall contact the attending**  
4 **physician and notify the local coroner or medical examiner immediately upon the death of**  
5 **any resident of the facility prior to transferring the deceased resident to a funeral home.**

198.082. 1. Each nursing assistant hired to work in a skilled nursing or intermediate care  
2 facility after January 1, 1980, shall have successfully completed a nursing assistant training  
3 program approved by the department or shall enroll in and begin the first available approved  
4 training program which is scheduled to commence within ninety days of the date of the nursing  
5 assistant's employment **and which shall be completed within four months of employment.**  
6 Training programs shall be offered at [a location] **any facility licensed or approved by the**  
7 **department of health and senior services which is** most reasonably accessible to the enrollees  
8 in each class. The program may be established by the skilled nursing or intermediate care

9 facility, by a professional organization, or by the department, and training shall be given by the  
10 personnel of the facility, by a professional organization, by the department, by any junior college  
11 or by the vocational education department of any high school.

12 2. As used in this section the term "nursing assistant" means an employee, including a  
13 nurse's aide or an orderly, who is assigned by a skilled nursing or intermediate care facility to  
14 provide or assist in the provision of direct resident health care services under the supervision of  
15 a nurse licensed under the nursing practice law, chapter 335, RSMo. This section shall not apply  
16 to any person otherwise licensed to perform health care services under the laws of this state. It  
17 shall not apply to volunteers or to members of religious or fraternal orders which operate and  
18 administer the facility, if such volunteers or members work without compensation.

19 3. The training program after January 1, 1989, shall consist of at least the following:

20 (1) A training program consisting of at least seventy-five classroom hours of training on  
21 basic nursing skills, clinical practice, resident safety and rights, the social and psychological  
22 problems of residents, and the methods of handling and caring for mentally confused residents  
23 such as those with Alzheimer's disease and related disorders, and one hundred hours supervised  
24 and on-the-job training. The one hundred hours **shall be completed within four months of**  
25 **employment and** may consist of normal employment as nurse assistants under the supervision  
26 of a licensed nurse; and

27 (2) Continuing in-service training to assure continuing competency in existing and new  
28 nursing skills. All nursing assistants trained prior to January 1, 1989, shall attend, by August 31,  
29 1989, an entire special retraining program established by rule or regulation of the department  
30 which shall contain information on methods of handling mentally confused residents and which  
31 may be offered on premises by the employing facility.

32 4. Nursing assistants who have not successfully completed the nursing assistant training  
33 program prior to employment may begin duties as a nursing assistant only after completing an  
34 initial twelve hours of basic orientation approved by the department and may provide direct  
35 resident care only if under the general supervision of a licensed nurse prior to completion of the  
36 seventy-five classroom hours of the training program.

198.085. In establishing standards for each type of facility, the department shall classify  
2 the standards into three categories for each type of licensed facility as follows:

3 (1) Class I standards are standards the violation of which [would] **is reasonably**  
4 **foreseeable to** present either an imminent danger to the health, safety or welfare of any resident  
5 or a substantial probability that death or serious physical harm would result;

6 (2) Class II standards are standards which have a direct or immediate relationship to the  
7 health, safety or welfare of any resident, but which do not create imminent danger;

8 (3) Class III standards are standards which have an indirect or a potential impact on the



9 health, safety or welfare of any resident.

198.086. 1. The division of aging shall develop and implement a demonstration project  
2 designed to establish a licensure category for health care facilities that wish to provide treatment  
3 to persons with Alzheimer's disease or Alzheimer's related dementia. The division shall also:  
4 (1) Inform potential providers of the demonstration project and seek letters of intent;  
5 (2) Review letters of intent and select provider organizations to participate in the  
6 demonstration project. Ten such organizations may develop such projects using an existing  
7 license and additional organizations shall be newly licensed facilities with no more than thirty  
8 beds per project. One demonstration project shall be at a stand-alone facility of no more than  
9 one hundred twenty beds designed and operated exclusively for the care of residents with  
10 Alzheimer's disease or dementia within a county of the first classification with a charter form of  
11 government with a population over nine hundred thousand. A total of not more than three  
12 hundred beds may be newly licensed through the demonstration projects. All projects shall  
13 maintain their pilot status until a complete evaluation is completed by the division of aging, in  
14 conjunction with a qualified Missouri school or university, and a written determination is made  
15 from such evaluation that the pilot project is successful;

16 (3) Monitor the participants' compliance with the criteria established in this section;

17 (4) Recommend legislation regarding the licensure of dementia-specific residential care  
18 based on the results of the demonstration project; and

19 (5) Submit a report regarding the division's activities and recommendations for  
20 administrative or legislative action on or before November fifteenth of each year to the governor,  
21 the president pro tem of the senate and the speaker of the house of representatives.

22 2. The director of the division of aging shall:

23 (1) Develop a reimbursement methodology to reasonably and adequately compensate the  
24 pilot projects for the costs of operation of the project, and require the filing of annual cost reports  
25 by each participating facility which shall include, but not be limited to, the cost equivalent of  
26 unpaid volunteer or donated labor;

27 (2) Process the license applications of project participants;

28 (3) Monitor each participant to assure its compliance with the requirements and that the  
29 life, health and safety of residents are assured;

30 (4) Require each participating facility to complete a minimum data set form for each  
31 resident occupying a pilot bed;

32 (5) Require the division of aging to assign a single team of the same surveyors to inspect  
33 and survey all participating facilities at least twice a year for the entire period of the project; and

34 (6) Submit to the president pro tem of the senate and speaker of the house of  
35 representatives copies of any statements of deficiencies, plans of correction and complaint

36 investigation reports applying to project participants.

37 3. Project participants shall:

38 (1) Be licensed by the division of aging;

39 (2) Provide care only to persons who have been diagnosed with Alzheimer's disease or  
40 Alzheimer's related dementia;

41 (3) Have buildings and furnishings that are designed to provide for the resident's safety.  
42 Facilities shall have indoor and outdoor activity areas, and electronically controlled exits from  
43 the buildings and grounds to allow residents the ability to explore while preventing them from  
44 exiting the facility's grounds unattended;

45 (4) Be staffed twenty-four hours a day by the appropriate number and type of personnel  
46 necessary for the proper care of residents and upkeep of the facility;

47 (5) Conduct special staff training relating to the needs, care and safety of persons with  
48 Alzheimer's disease or Alzheimer's related dementia within the first thirty days of employment;

49 (6) Utilize personal electronic monitoring devices for any resident whose physician  
50 recommends use of such device;

51 (7) Permit the resident's physician, in consultation with the family members or health  
52 care advocates of the resident, to determine whether the facility meets the needs of the resident;

53 (8) Be equipped with an automatic sprinkler system, in compliance with the National  
54 Fire Protection Association Code 13 or National Fire Protection Association Code 13R, and an  
55 automated fire alarm system and smoke barriers in compliance with the 1997 Life Safety Codes  
56 for Existing Health Care Occupancy; and

57 (9) Implement a social model for the residential environment rather than an institutional  
58 medical model.

59 4. For purposes of this section, "health care facilities for persons with Alzheimer's  
60 disease or Alzheimer's related dementia" means facilities that are specifically designed and  
61 operated to provide elderly individuals who have chronic confusion or dementia illness, or both,  
62 with a safe, structured but flexible environment that encourages physical activity through a  
63 well-developed recreational and aging-in-place, and activity program. Such program shall  
64 continually strive to promote the highest practicable physical and mental abilities and functioning  
65 of each resident.

66 **5. Nothing in this section shall be construed to prohibit project participants from**  
67 **accommodating a family member or other caregiver from residing with the resident in**  
68 **accordance with all life, health, and safety standards of the facility.**

198.093. 1. Any resident or former resident who is deprived of any right [created]  
2 **enumerated in** by sections 198.088 and 198.090, or the estate of a former resident so deprived,  
3 may file a written complaint within one hundred eighty days of the alleged deprivation or injury

4 with the office of the attorney general describing the facts surrounding the alleged deprivation.  
5 A copy of the complaint shall be sent to the department by the attorney general.

6 2. The attorney general shall review each complaint and may initiate legal action as  
7 provided under sections 198.003 to 198.186.

8 3. If the attorney general fails to initiate a legal action within sixty days of receipt of the  
9 complaint, the complainant may, within two hundred forty days of filing the complaint with the  
10 attorney general, bring a civil action in an appropriate court against any [owner,] operator **as**  
11 **defined in subdivision (12) of section 198.006** or the agent of any [owner or] operator to  
12 recover actual damages. The court may, in its discretion, award punitive damages which shall  
13 be limited to the larger of five hundred dollars or five times the amount of special damages[,  
14 unless the deprivation complained of is the result of an intentional act or omission causing  
15 physical or emotional injury to the resident, and may award to the prevailing party attorney's fees  
16 based on the amount of time reasonably expended, and may provide such equitable relief as it  
17 deems necessary and proper; except that, an attorney who is paid in whole or part from public  
18 funds for his representation in any cause arising under this section shall not be awarded any  
19 attorney fees]. **Any award of punitive damages made under this section should be made**  
20 **only if the complainant pleads and proves by clear and convincing evidence that the health**  
21 **care provider as defined in subdivision (7) of section 198.006 demonstrated willful, wanton,**  
22 **or malicious misconduct with respect to his actions which are found to have injured or**  
23 **caused or contributed to the cause of damages alleged in the petition.**

24 4. No [owner or] operator who pleads and proves as an affirmative defense that he  
25 exercised all care reasonably necessary to prevent the deprivation and injury for which liability  
26 is asserted shall be liable under this section.

27 5. Persons bringing suit to recover against a bond for personal funds pursuant to section  
28 198.096 shall not be required to first file a complaint with the attorney general pursuant to  
29 subsection 1 of this section, nor shall subsection 1 be construed to limit in any way the right to  
30 recover on such bond.

31 6. Nothing contained in sections 198.003 to 198.186 shall be construed as abrogating,  
32 abridging or otherwise limiting the right of any person to bring appropriate legal actions in any  
33 court of competent jurisdiction to insure or enforce any legal right or to seek damages, nor shall  
34 any provision of the above-named sections be construed as preventing or discouraging any  
35 person from filing a complaint with the department or notifying the department of any alleged  
36 deficiency or noncompliance on the part of any facility.

198.105. 1. Any petition for appointment of a receiver shall be verified and shall be  
2 accompanied by an affidavit or affidavits setting forth material facts showing there exists one or  
3 more of the conditions specified in section 198.099. The petition shall be filed in the circuit

4 court of Cole County or in the county where the facility is located. If the petition is not filed by  
5 the attorney general, a copy of the petition shall be served upon the department and upon the  
6 attorney general. The court shall hold a hearing on the petition within five days of the filing of  
7 the petition and determine the matter within fifteen days of the initial hearing. The petition and  
8 notice of the hearing shall be served on the operator or administrator of the facility or, if personal  
9 service is impossible, shall be posted in a conspicuous place in the facility not later than three  
10 days before the time specified for the hearing, unless a different period is fixed by order of the  
11 court.

12       **2.** The court shall appoint [the director of the department or his designee, or any person  
13 determined by the court to be qualified,] **a person, selected in accordance with the provisions**  
14 **of this subsection and the rules promulgated pursuant to this section,** to act as receiver if it  
15 finds that any ground exists which would authorize the appointment of a receiver under section  
16 198.099 and that appointment of a receiver will contribute to the continuity of care or the orderly  
17 and safe transfer of residents in the facility. **The department shall, within six months of the**  
18 **effective date of this act, promulgate rules to establish guidelines for the determination of**  
19 **qualified receivers, procedures for maintaining the list of qualified receivers that requested**  
20 **in writing to act as a receiver, and the selection or removal of such receivers. Any rule or**  
21 **portion of a rule, as that term is defined in section 536.010, RSMo, that is created under**  
22 **the authority delegated in this section shall become effective only if it complies with and**  
23 **is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028,**  
24 **RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers**  
25 **vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the**  
26 **effective date, or to disapprove and annul a rule are subsequently held unconstitutional,**  
27 **then the grant of rulemaking authority and any rule proposed or adopted after August 28,**  
28 **2003, shall be invalid and void.**

29       **3.** The director of the department shall maintain a list of persons who have  
30 submitted a written request in accordance with the provisions of this subsection and the  
31 rules promulgated by the department to act as receiver pursuant to section 198.099. When  
32 a petition is filed seeking the appointment of a receiver, the director of the department  
33 shall select the first name on the list. The director of the department shall inform such  
34 person of his or her selection, the name of the facility, and the grounds for seeking  
35 receivership of such facility. Such person may elect not to be appointed, in which case the  
36 director of the department shall choose the next consecutive name on the list, continuing  
37 until a person has agreed to serve as the receiver. The director shall provide the name of  
38 the person selected and agreeing to serve as the receiver to the judge of the court wherein  
39 the petition for receivership is filed. For each additional petition filed seeking the

40 **appointment of a receiver, names shall be chosen from the list in consecutive order**  
41 **beginning with the next name that follows the last name chosen. If none of the persons on**  
42 **the list agree to serve as the receiver, the court shall appoint a person determined by the**  
43 **court to be qualified to act as receiver.**

198.301. No employee of a nursing home district who directs or exercises any  
2 authority in a facility shall evict, harass, dismiss, or retaliate against a resident or employee  
3 because such resident or employee or any member of such resident's or employee's family  
4 has made a report of any violation or suspected violation of laws, ordinances, or  
5 regulations applying to the facility which the resident, the resident's family, or an employee  
6 has reasonable cause to believe has been committed or has occurred. Through the existing  
7 department information and referral telephone contact line, residents, their families, and  
8 employees of a facility shall be able to obtain information about their rights, protections,  
9 and options in cases of eviction, harassment, dismissal, or retaliation due to a report being  
10 made pursuant to this section.

198.428. If the division of family services is unable to make a determination  
2 regarding Medicaid eligibility for a resident within sixty days of the submission of a  
3 completed application for medical assistance for nursing facility services, the patient shall  
4 be Medicaid eligible until the application is approved or denied. However, in no event shall  
5 benefits be construed to commence prior to the date of application.

198.525. Except as otherwise provided pursuant to section 198.526, in order to  
2 comply with sections 198.012 and 198.022, the department of health and senior services shall  
3 inspect **residential care facilities I**, residential care facilities II, intermediate care facilities, and  
4 skilled nursing, **including those** facilities attached to acute care hospitals at least twice a year.

198.526. 1. [The division of aging] **Except as provided in subsection 3 of this section,**  
2 **the department of health and senior services** shall inspect all facilities licensed by the  
3 [division] **department** at least twice each year. Such inspections shall be conducted:

4 (1) Without the prior notification of the facility; and  
5 (2) At times of the day, on dates and at intervals which do not permit facilities to  
6 anticipate such inspections.

7 2. The [division] **department** shall annually reevaluate the inspection process to ensure  
8 the requirements of subsection 1 of this section are met.

9 3. **The department may reduce the frequency of inspections to once a year if a**  
10 **facility is found to be in substantial compliance. The basis for such determination shall**  
11 **include, but not be limited to, the following:**

12 (1) **Previous inspection reports;**  
13 (2) **The facility's history of compliance with rules promulgated pursuant to this**

14 **chapter;**

15 **(3) The number and severity of complaints received about the facility; and**

16 **(4) In the year subsequent to a finding of no class I violations or class II violations,**  
17 **the facility does not have a change in ownership, operator, or, if the department finds it**  
18 **significant, a change in director of nursing.**

19 **4. Information regarding unannounced inspections shall be disclosed to employees**  
20 **of the department on a need-to-know basis only. Any employee of the department who**  
21 **knowingly discloses the time of an unannounced inspection in violation of this section is**  
22 **guilty of a class A misdemeanor and shall have his or her employment immediately**  
23 **terminated.**

**198.528. 1. The department of health and senior services shall provide through its**  
2 **Internet web site:**

3 **(1) The most recent survey of every long-term care facility licensed in this state and**  
4 **any such findings of deficiencies and the effect the deficiency would have on such facility.**  
5 **If such survey is in dispute, the survey shall not be posted on the web site until the facility's**  
6 **informal dispute resolution process resolves the dispute and the department shall, upon**  
7 **request of the facility, post the facility's response;**

8 **(2) The facility's proposed plan of correction;**

9 **(3) A link to the federal web site that provides a summary of facility surveys**  
10 **conducted over the last three years; and**

11 **(4) Information on how to obtain a copy of a complete facility survey conducted**  
12 **over the last three years.**

13 **2. Nothing in this section shall be construed as requiring the department to post any**  
14 **information on its Internet web site that is prohibited from disclosure pursuant to the**  
15 **federal Health Insurance Portability and Accountability Act, as amended.**

**198.532. 1. Complaints filed with the [division of aging] department of health and**  
2 **senior services** against a long-term care facility which allege that harm has occurred or is likely  
3 to occur to a resident or residents of the facility due to actions or the lack of actions taken by the  
4 facility shall be investigated within thirty days of receipt of such complaints. The purpose of  
5 such investigation shall be to ensure the safety, protection and care of all residents of the facility  
6 likely to be affected by the alleged action or inaction. Such investigation shall be in addition to  
7 the investigation requirements for abuse and neglect reports pursuant to section 198.070.

8 **2. The [division] department** shall provide the results of all investigations in accordance  
9 with section 660.320, RSMo. The [division] **department** shall provide the results of such  
10 investigation in writing to all parties to the complaint, and if requested, to any of the facility's  
11 residents, or their family members or guardians. Complaints and written results will be readily

12 available for public access and review at the [division of aging] **department of health and**  
13 **senior services** and at the long-term care facility. Personal information identifying the resident  
14 will be blanked out, except in regard to immediate family, the attorney-in-fact or the legal  
15 guardian of the resident in question. This information will remain readily available for a period  
16 of time determined by the [division of aging] **department of health and senior services**.

**198.600. 1. The department of health and senior services shall establish a "Uniform**  
2 **Data Management Pilot Program" at a minimum of fifty selected facilities of varying**  
3 **licensure or classification throughout the state to improve patient care and retention of**  
4 **nursing facility staff. The department shall determine the nature and extent of the pilot**  
5 **program and provide all necessary resources.**

6 **2. The pilot program shall be implemented no later than six months after funding**  
7 **for the pilot program is made available.**

8 **3. The pilot program shall:**

9 **(1) Encourage the utilization of existing or the purchase of new software in an**  
10 **effort to modernize the procedures for compiling and disseminating data for long-term**  
11 **care facilities;**

12 **(2) Enable physicians, licensed nurses, and facility personnel to devote more quality**  
13 **time to patient care; and**

14 **(3) Be established in selected urban, rural, and regional sites throughout the state.**

15 **4. The department of health and senior services shall monitor the pilot program**  
16 **and report to the general assembly by January first next following the implementation of**  
17 **the pilot program pursuant to this section on the effectiveness of such program, including**  
18 **quality of care, employee satisfaction, and cost-effectiveness.**

**208.225. 1. To implement fully the provisions of section 208.152, the division of**  
2 **medical services shall recalculate annually the Medicaid per diem reimbursement rates of**  
3 **each nursing home participating in the Medicaid program as a provider of nursing home**  
4 **services based on its costs reported in the Title XIX cost report filed with the division of**  
5 **medical services for its fiscal year preceding the two facility fiscal years preceding the**  
6 **effective date of the recalculated rates, provided however:**

7 **(1) The recalculated Medicaid per diem reimbursement rate of a nursing home**  
8 **shall not be reduced below the rate allowed on the effective date of the initial recalculation**  
9 **for that nursing home pursuant to this section for the first three years following initial**  
10 **recalculation; and**

11 **(2) The recalculated Medicaid per diem reimbursement rate of a nursing home**  
12 **shall not be less than ninety dollars per day; and**

13 **(3) The division of medical services, when recalculating the Medicaid per diem**

14 reimbursement rate of any facility, shall not apply to that calculation a minimum  
15 utilization adjustment greater than the most current statewide average occupancy of all  
16 licensed nursing homes minus three percent.

17 **2. The recalculation of Medicaid rates to all Missouri facilities will be performed**  
18 **over three state fiscal years in three separate payments beginning July 1, 2003, as follows:**

19 **(1) Effective July 1, 2003, the department of social services shall use the Medicaid**  
20 **cost report containing adjusted costs for the facility fiscal year ending in 2000 and**  
21 **redetermine the allowable per patient day costs for each facility. It will add to that**  
22 **redetermined cost an inflationary factor to update those costs to July 1, 2003. The**  
23 **department shall recalculate the class ceilings in the patient care, one hundred twenty**  
24 **percent of the median; ancillary, one hundred twenty percent of the median; and**  
25 **administration, one hundred ten percent of the median cost centers. Each facility shall**  
26 **receive one third of the amount that it is underpaid based on the recalculated cost**  
27 **determination;**

28 **(2) Effective July 1, 2004, the department shall perform the same calculations**  
29 **described in subdivision (1) of this subsection, except that the calculations will be**  
30 **performed using the Medicaid cost report containing adjusted costs for the facility fiscal**  
31 **year ending in 2001. The facility shall receive one third of the amount that it is underpaid;**

32 **(3) Effective July 1, 2005, the department shall perform the same calculations**  
33 **described in subdivision (1) of this subsection, except that the calculations will be**  
34 **performed using the Medicaid cost report containing adjusted costs for the facility fiscal**  
35 **year ending in 2002. The facility shall receive one third of the amount that it is underpaid;**

36 **(4) Effective July 1, 2006, each facility shall receive a full Medicaid recalculation**  
37 **based upon its 2003 Medicaid cost report of adjusted costs.**

565.186. The department of [social services] **health and senior services** shall  
2 investigate incidents and reports of elder abuse using the procedures established in sections  
3 660.250 to 660.295, RSMo, and upon substantiation of the report of elder abuse, shall promptly  
4 report the incident to the appropriate law enforcement agency and prosecutor and shall determine  
5 whether protective services are required pursuant to sections 660.250 to 660.295, RSMo. **If the**  
6 **department is unable to substantiate whether abuse occurred due to the failure of the**  
7 **operator or any of the operator's agents or employees to cooperate with the investigation,**  
8 **the incident shall be promptly reported to appropriate law enforcement agencies.**

565.188. 1. When any [physician, medical examiner, coroner, dentist, chiropractor,  
2 optometrist, podiatrist, resident intern, nurse, hospital and clinic personnel engaged in  
3 examination, care or treatment of persons, or other health practitioners, psychologists, mental  
4 health professional, social worker, adult day care center worker, nursing home worker, probation



5 or parole officer, Christian Science practitioner, peace officer or law enforcement official,] **adult**  
6 **day care worker; chiropractor; Christian Science practitioner; coroner; dentist;**  
7 **embalmer; employee of the departments of social services, mental health, or health and**  
8 **senior services; employee of a local area agency on aging or an organized area agency on**  
9 **aging program; funeral director; home health agency or home health agency employee;**  
10 **hospital and clinic personnel engaged in examination, care, or treatment of persons; in-**  
11 **home services owner, provider, operator, or employee; law enforcement officer; long-term**  
12 **care facility administrator or employee; medical examiner; medical resident or intern;**  
13 **mental health professional; minister; nurse; nurse practitioner; optometrist; other health**  
14 **practitioner; peace officer; pharmacist; physical therapist; physician; physician's assistant;**  
15 **podiatrist; probation or parole officer; psychologist; social worker;** or other person with  
16 responsibility for the care of a person sixty years of age or older has reasonable cause to suspect  
17 that such a person has been subjected to abuse or neglect or observes such a person being  
18 subjected to conditions or circumstances which would reasonably result in abuse or neglect, he  
19 **or she** shall immediately report or cause a report to be made to the department in accordance  
20 with the provisions of sections 660.250 to 660.295, RSMo. Any other person who becomes  
21 aware of circumstances which may reasonably be expected to be the result of or result in abuse  
22 or neglect may report to the department.

23 2. Any person who knowingly fails to make a report as required in subsection 1 of this  
24 section is guilty of a class A misdemeanor.

25 3. Any person who purposely files a false report of elder abuse or neglect [shall be] **is**  
26 guilty of a class A misdemeanor.

27 4. Every person who has been previously convicted of or pled guilty to making a false  
28 report to the department and who is subsequently convicted of making a false report under  
29 subsection 3 of this section is guilty of a class D felony.

30 5. Evidence of prior convictions of false reporting shall be heard by the court, out of the  
31 hearing of the jury, prior to the submission of the case to the jury, and the court shall determine  
32 the existence of the prior convictions.

570.145. 1. A person [is guilty of the offense] **commits the crime** of financial  
2 exploitation of an elderly or disabled person if such person [stands in a position of trust and  
3 confidence with the elderly or disabled person, and such person] knowingly and by deception  
4 [or], intimidation, **or force** obtains control over the elderly or disabled person's property with the  
5 intent to permanently deprive the elderly or disabled person of the use, benefit or possession of  
6 his or her property thereby benefiting such person or detrimentally affecting the elderly or  
7 disabled person. Financial exploitation of an elderly or disabled person is a class A  
8 misdemeanor if the value of the property is less than [two hundred] fifty dollars [and], a class [C]

9 **D felony if the value of the property is [two hundred fifty dollars or more] fifty dollars but less**  
10 **than five hundred dollars, a class C felony if the value of the property is five hundred**  
11 **dollars but less than one thousand dollars, and a class B felony if the value of the property**  
12 **is one thousand dollars or more.**

13 2. For purposes of this section, the following terms mean:

14 (1) "Deception", a misrepresentation or concealment of material fact relating to the terms  
15 of a contract or agreement entered into with the elderly or disabled person or to the existing or  
16 preexisting condition of any of the property involved in such contract or agreement, or the use  
17 or employment of any misrepresentation, false pretense or false promise in order to induce,  
18 encourage or solicit the elderly or disabled person to enter into a contract or agreement.  
19 Deception includes:

20 (a) Creating or confirming another person's impression which is false and which the  
21 offender does not believe to be true; or

22 (b) Failure to correct a false impression which the offender previously has created or  
23 confirmed; or

24 (c) Preventing another person from acquiring information pertinent to the disposition of  
25 the property involved; or

26 (d) Selling or otherwise transferring or encumbering property, failing to disclose a lien,  
27 adverse claim or other legal impediment to the enjoyment of the property, whether such  
28 impediment is or is not valid, or is or is not a matter of official record; or

29 (e) Promising performance which the offender does not intend to perform or knows will  
30 not be performed. Failure to perform standing alone is not sufficient evidence to prove that the  
31 offender did not intend to perform;

32 (2) "Disabled person", a person who suffers from a physical or mental impairment  
33 resulting from disease, injury, functional disorder or congenital condition which renders such  
34 person incapable of avoiding or preventing the commission of an offense;

35 (3) "Elderly person", a person sixty years of age or older who is suffering from a disease  
36 or infirmity associated with advanced age and manifested by physical, mental or emotional  
37 dysfunctioning to the extent that such person is incapable of avoiding or preventing the  
38 commission of the offense;

39 (4) "Intimidation", the communication to an elderly or disabled person that he or she will  
40 be deprived of food and nutrition, shelter, prescribed medication, or medical care and treatment.

41 3. [For purposes of this section, a person stands in a position of trust and confidence with  
42 an elderly or disabled person when such person:

43 (1) Is a parent, spouse, adult child or other relative by blood or marriage of the elderly  
44 or disabled person;

45 (2) Is a joint tenant or tenant in common with the elderly or disabled person with  
46 knowledge of such relationship;

47 (3) Has a legal or fiduciary relationship with the elderly or disabled person; or

48 (4) Has a relationship with the elderly or disabled person as a health care or personal care  
49 worker.

50 4.] Nothing in this section shall be construed to limit the remedies available to the victim  
51 pursuant to any state law relating to domestic violence.

52 [5.] 4. Nothing in this section shall be construed to impose criminal liability on a person  
53 who has made a good faith effort to assist the elderly or disabled person in the management of  
54 his or her property, but through no fault of his or her own has been unable to provide such  
55 assistance.

56 [6.] 5. Nothing in this section shall limit the ability to engage in bona fide estate  
57 planning, to transfer property and to otherwise seek to reduce estate and inheritance taxes;  
58 provided that such actions do not adversely impact the standard of living to which the elderly or  
59 disabled person has become accustomed at the time of such actions.

60 [7.] 6. It shall not be a defense to financial exploitation of an elderly or disabled person  
61 that the accused reasonably believed that the victim was not an elderly or disabled person.

630.140. 1. Information and records compiled, obtained, prepared or maintained by the  
2 residential facility, day program operated, funded or licensed by the department or otherwise,  
3 specialized service, or by any mental health facility or mental health program in which people  
4 may be civilly detained pursuant to chapter 632, RSMo, in the course of providing services to  
5 either voluntary or involuntary patients, residents or clients shall be confidential.

6 2. The facilities or programs shall disclose information and records including medication  
7 given, dosage levels, and individual ordering such medication to the following upon their  
8 request:

9 (1) The parent of a minor patient, resident or client;

10 (2) The guardian or other person having legal custody of the patient, resident or client;

11 (3) The attorney of a patient, resident or client who is a ward of the juvenile court, an  
12 alleged incompetent, an incompetent ward or a person detained under chapter 632, RSMo, as  
13 evidenced by court orders of the attorney's appointment;

14 (4) An attorney or personal physician as authorized by the patient, resident or client;

15 (5) Law enforcement officers and agencies, information about patients, residents or  
16 clients committed pursuant to chapter 552, RSMo, but only to the extent necessary to carry out  
17 the responsibilities of their office, and all such law enforcement officers shall be obligated to  
18 keep such information confidential;

19 (6) The entity or agency authorized to implement a system to protect and advocate the

20 rights of persons with developmental disabilities under the provisions of 42 U.S.C. [6042]  
21 **Sections 15042 to 15044.** The entity or agency shall be able to obtain access to the records of  
22 a person with developmental disabilities who is a client of the entity or agency if such person has  
23 authorized the entity or agency to have such access; and the records of any person with  
24 developmental disabilities who, by reason of mental or physical condition is unable to authorize  
25 the entity or agency to have such access, if such person does not have a legal guardian,  
26 conservator or other legal representative, and a complaint has been received by the entity or  
27 agency with respect to such person or there is probable cause to believe that such person has been  
28 subject to abuse or neglect. The entity or agency obtaining access to a person's records shall  
29 meet all requirements for confidentiality as set out in this section;

30 (7) The entity or agency authorized to implement a system to protect and advocate the  
31 rights of persons with mental illness under the provisions of 42 U.S.C. 10801 shall be able to  
32 obtain access to the records of a patient, resident or client who by reason of mental or physical  
33 condition is unable to authorize the system to have such access, who does not have a legal  
34 guardian, conservator or other legal representative and with respect to whom a complaint has  
35 been received by the system or there is probable cause to believe that such individual has been  
36 subject to abuse or neglect. The entity or agency obtaining access to a person's records shall  
37 meet all requirements for confidentiality as set out in this section. The provisions of this  
38 subdivision shall apply to a person who has a significant mental illness or impairment as  
39 determined by a mental health professional qualified under the laws and regulations of the state;

40 (8) To mental health coordinators, but only to the extent necessary to carry out their  
41 duties under chapter 632, RSMo.

42 3. The facilities or services may disclose information and records under any of the  
43 following:

44 (1) As authorized by the patient, resident or client;

45 (2) To persons or agencies responsible for providing health care services to such patients,  
46 residents or clients;

47 (3) To the extent necessary for a recipient to make a claim or for a claim to be made on  
48 behalf of a recipient for aid or insurance;

49 (4) To qualified personnel for the purpose of conducting scientific research, management  
50 audits, financial audits, program evaluations or similar studies; provided, that such personnel  
51 shall not identify, directly or indirectly, any individual patient, resident or client in any report of  
52 such research, audit or evaluation, or otherwise disclose patient, resident or client identities in  
53 any manner;

54 (5) To the courts as necessary for the administration of chapter 211, RSMo, 475, RSMo,  
55 552, RSMo, or 632, RSMo;

56 (6) To law enforcement officers or public health officers, but only to the extent necessary  
57 to carry out the responsibilities of their office, and all such law enforcement and public health  
58 officers shall be obligated to keep such information confidential;

59 (7) Pursuant to an order of a court or administrative agency of competent jurisdiction;

60 (8) To the attorney representing petitioners, but only to the extent necessary to carry out  
61 their duties under chapter 632, RSMo;

62 (9) To the department of social services **or the department of health and senior**  
63 **services** as necessary to report or have investigated abuse, neglect, or rights violations of  
64 patients, residents, or clients;

65 (10) To a county board established pursuant to sections 205.968 to 205.972, RSMo 1986,  
66 but only to the extent necessary to carry out their statutory responsibilities. The county board  
67 shall not identify, directly or indirectly, any individual patient, resident or client.

68 4. The facility or program shall document the dates, nature, purposes and recipients of  
69 any records disclosed under this section and sections 630.145 and 630.150.

70 5. The records and files maintained in any court proceeding under chapter 632, RSMo,  
71 shall be confidential and available only to the patient, [his] **the patient's** attorney, guardian, or,  
72 in the case of a minor, to a parent or other person having legal custody of the patient, and to the  
73 petitioner and [his] **the petitioner's** attorney. In addition, the court may order the release or use  
74 of such records or files only upon good cause shown, and the court may impose such restrictions  
75 as the court deems appropriate.

76 6. Nothing contained in this chapter shall limit the rights of discovery in judicial or  
77 administrative procedures as otherwise provided for by statute or rule.

78 7. The fact of admission of a voluntary or involuntary patient to a mental health facility  
79 under chapter 632, RSMo, may only be disclosed as specified in subsections 2 and 3 of this  
80 section.

630.165. 1. When any physician, dentist, chiropractor, optometrist, podiatrist, intern,  
2 nurse, medical examiner, social worker, psychologist, minister, Christian Science practitioner,  
3 peace officer, pharmacist, physical therapist, facility administrator, nurse's aide or orderly in a  
4 residential facility, day program or specialized service operated, funded or licensed by the  
5 department or in a mental health facility or mental health program in which people may be  
6 admitted on a voluntary basis or are civilly detained pursuant to chapter 632, RSMo, or employee  
7 of the department has reasonable cause to believe that a patient, resident or client of a facility,  
8 program or service has been abused or neglected, he **or she** shall immediately report or cause a  
9 report to be made to the department or the department of health and senior services, if such  
10 facility or program is licensed pursuant to chapter 197, RSMo.

11 2. The report shall contain the name and address of the residential facility, day program

12 or specialized service; the name of the patient, resident or client; information regarding the  
13 nature of the abuse or neglect; the name of the complainant, and any other information which  
14 might be helpful in an investigation.

15 3. Any person required in subsection 1 of this section to report or cause a report to be  
16 made to the department who fails to do so within a reasonable time after the act of abuse or  
17 neglect is guilty of an infraction.

18 4. In addition to those persons required to report under subsection 1 of this section, any  
19 other person having reasonable cause to believe that a resident has been abused or neglected may  
20 report such information to the department.

21 **5. Any person who knowingly files a false report of abuse or neglect is guilty of a**  
22 **class A misdemeanor.**

23 **6. Any person having a prior conviction of filing false reports and who**  
24 **subsequently files a false report of abuse or neglect pursuant to this section or section**  
25 **565.188, RSMo, is guilty of a class D felony.**

26 630.167. 1. Upon receipt of a report, the department or its agents, contractors or vendors  
27 or the department of health and senior services, if such facility or program is licensed pursuant  
28 to chapter 197, RSMo, shall initiate an investigation within twenty-four hours.

29 2. If the investigation indicates possible abuse or neglect of a patient, resident or client,  
30 the investigator shall refer the complaint together with the investigator's report to the department  
31 director for appropriate action. If, during the investigation or at its completion, the department  
32 has reasonable cause to believe that immediate removal from a facility not operated or funded  
33 by the department is necessary to protect the residents from abuse or neglect, the department or  
34 the local prosecuting attorney may, or the attorney general upon request of the department shall,  
35 file a petition for temporary care and protection of the residents in a circuit court of competent  
36 jurisdiction. The circuit court in which the petition is filed shall have equitable jurisdiction to  
37 issue an ex parte order granting the department authority for the temporary care and protection  
38 of the resident for a period not to exceed thirty days.

39 3. (1) Reports referred to in section 630.165 and the investigative reports referred to in  
40 this section shall be confidential, shall not be deemed a public record, and shall not be subject  
41 to the provisions of section 109.180, RSMo, or chapter 610, RSMo; except that[:] complete  
42 copies all such reports shall be open and available to the parents or other guardian of the patient,  
43 resident, or client who is the subject of such report, [except that] **but** the names and any other  
44 descriptive information of the complainant or other person mentioned in the reports shall not be  
45 disclosed unless such complainant or person specifically consents to such disclosure. All reports  
46 referred to in this section shall be admissible in any judicial proceedings or hearing in accordance  
47 with section 36.390, RSMo, or any administrative hearing before the director of the department

48 of mental health, or the director's designee. All such reports may be disclosed by the department  
49 of mental health to law enforcement officers and public health officers, but only to the extent  
50 necessary to carry out the responsibilities of their offices, and to the department of social  
51 services, **and the department of health and senior services**, and to boards appointed pursuant  
52 to sections 205.968 to 205.990, RSMo, that are providing services to the patient, resident or  
53 client as necessary to report or have investigated abuse, neglect, or rights violations of patients,  
54 residents or clients provided that all such law enforcement officers, public health officers,  
55 department of social services' officers, **department of health and senior services' officers**, and  
56 boards shall be obligated to keep such information confidential;

57 (2) Except as otherwise provided in this section, the proceedings, findings, deliberations,  
58 reports and minutes of committees of health care professionals as defined in section 537.035,  
59 RSMo, or mental health professionals as defined in section 632.005, RSMo, who have the  
60 responsibility to evaluate, maintain, or monitor the quality and utilization of mental health  
61 services are privileged and shall not be subject to the discovery, subpoena or other means of legal  
62 compulsion for their release to any person or entity or be admissible into evidence into any  
63 judicial or administrative action for failure to provide adequate or appropriate care. Such  
64 committees may exist, either within department facilities or its agents, contractors, or vendors,  
65 as applicable. Except as otherwise provided in this section, no person who was in attendance at  
66 any investigation or committee proceeding shall be permitted or required to disclose any  
67 information acquired in connection with or in the course of such proceeding or to disclose any  
68 opinion, recommendation or evaluation of the committee or board or any member thereof;  
69 provided, however, that information otherwise discoverable or admissible from original sources  
70 is not to be construed as immune from discovery or use in any proceeding merely because it was  
71 presented during proceedings before any committee or in the course of any investigation, nor is  
72 any member, employee or agent of such committee or other person appearing before it to be  
73 prevented from testifying as to matters within their personal knowledge and in accordance with  
74 the other provisions of this section, but such witness cannot be questioned about the testimony  
75 or other proceedings before any investigation or before any committee;

76 (3) Nothing in this section shall limit authority otherwise provided by law of a health  
77 care licensing board of the state of Missouri to obtain information by subpoena or other  
78 authorized process from investigation committees or to require disclosure of otherwise  
79 confidential information relating to matters and investigations within the jurisdiction of such  
80 health care licensing boards; provided, however, that such information, once obtained by such  
81 board and associated persons, shall be governed in accordance with the provisions of this  
82 subsection;

83 (4) Nothing in this section shall limit authority otherwise provided by law in

84 subdivisions (5) and (6) of subsection 2 of section 630.140 concerning access to records by the  
85 entity or agency authorized to implement a system to protect and advocate the rights of persons  
86 with developmental disabilities under the provisions of 42 U.S.C. 6042 and the entity or agency  
87 authorized to implement a system to protect and advocate the rights of persons with mental  
88 illness under the provisions of 42 U.S.C. 10801. In addition, nothing in this section shall serve  
89 to negate assurances that have been given by the governor of Missouri to the U.S. Administration  
90 on Developmental Disabilities, Office of Human Development Services, Department of Health  
91 and Human Services concerning access to records by the agency designated as the protection and  
92 advocacy system for the state of Missouri. However, such information, once obtained by such  
93 entity or agency, shall be governed in accordance with the provisions of this subsection.

94 4. Anyone who makes a report pursuant to this section or who testifies in any  
95 administrative or judicial proceeding arising from the report shall be immune from any civil  
96 liability for making such a report or for testifying unless such person acted in bad faith or with  
97 malicious purpose.

98 5. Within five working days after a report required to be made pursuant to this section  
99 is received, the person making the report shall be notified in writing of its receipt and of the  
100 initiation of the investigation.

101 6. No person who directs or exercises any authority in a residential facility, day program  
102 or specialized service shall evict, harass, dismiss or retaliate against a patient, resident or client  
103 or employee because he or she or any member of his or her family has made a report of any  
104 violation or suspected violation of laws, ordinances or regulations applying to the facility which  
105 he or she has reasonable cause to believe has been committed or has occurred.

106 7. Any person who is discharged as a result of an administrative substantiation of  
107 allegations contained in a report of abuse or neglect may, after exhausting administrative  
108 remedies as provided in chapter 36, RSMo, appeal such decision to the circuit court of the county  
109 in which such person resides within ninety days of such final administrative decision. The court  
110 may accept an appeal up to twenty-four months after the party filing the appeal received notice  
111 of the department's determination, upon a showing that:

112 (1) Good cause exists for the untimely commencement of the request for the review;

113 (2) If the opportunity to appeal is not granted it will adversely affect the party's  
114 opportunity for employment; and

115 (3) There is no other adequate remedy at law.

660.078. 1. In each tax year beginning on or after January 1, 1993, each individual or  
2 corporation entitled to a tax refund in an amount sufficient to make a designation pursuant to this  
3 section may designate that two dollars or any amount in excess of two dollars on a single return,  
4 and four dollars or any amount in excess of four dollars on a combined return, of the refund due



5 be credited to the division of aging elderly home-delivered meals trust fund, established in  
6 subsection 3 of this section. The contribution designation authorized by this section shall be  
7 clearly and unambiguously printed on each income tax return form provided by this state. If any  
8 individual or corporation which is not entitled to a tax refund in an amount sufficient to make  
9 a designation pursuant to this section wishes to make a contribution to the division of aging  
10 elderly home-delivered meals trust fund, such individual or corporation may, by separate check,  
11 draft, or other negotiable instrument, send in with the payment of taxes, or may send in  
12 separately, that amount, clearly designated for the division of aging elderly home-delivered meals  
13 trust fund, the individual or corporation wishes to contribute and the department of revenue shall  
14 forward such amount to the state treasurer for deposit to the fund as provided in subsection 2 of  
15 this section.

16 2. The director of revenue shall transfer at least monthly all contributions designated by  
17 individuals or corporations pursuant to this section, less an amount not to exceed five percent  
18 of such transferred contributions which is sufficient to cover the cost of collection and handling  
19 by the department of revenue, to the state treasurer for deposit in the state treasury to the credit  
20 of the [division of aging] elderly home-delivered meals trust fund. A contribution designated  
21 pursuant to this section shall only be transferred and deposited in the [division of aging] elderly  
22 home-delivered meals trust fund after all other claims against the refund from which such  
23 contribution is to be made have been satisfied.

24 3. There is hereby established in the state treasury the "[Division of Aging] Elderly  
25 Home-Delivered Meals Trust Fund", which shall consist of all moneys deposited in the fund  
26 pursuant to subsection 2 of this section. The state treasurer shall administer the fund, and the  
27 moneys in the fund shall be used solely, upon appropriation, by the [division of aging]  
28 **department of health and senior services** for assistance in preparing and transporting meals  
29 to elderly persons in this state through a program designed to meet such purposes. These funds  
30 shall be transferred by the [division of aging] **department** to the area agencies on aging using  
31 the same formula as used for distribution of federal Older Americans Act moneys and moneys  
32 from the general revenue fund. Notwithstanding the provisions of section 33.080, RSMo, to the  
33 contrary, moneys in the [division of aging] elderly home-delivered meals trust fund at the end  
34 of any biennium shall not be transferred to the credit of the general revenue fund.

660.250. As used in sections 660.250 to [660.305] **660.321**, the following terms mean:

- 2 (1) "Abuse", the infliction of physical, sexual, or emotional injury or harm including  
3 financial exploitation by any person, firm or corporation;
- 4 (2) "Court", the circuit court;
- 5 (3) "Department", the department of [social services] **health and senior services**;
- 6 (4) "Director", director of the department of [social services] **health and senior services**

7 or his **or her** designees;

8 (5) "Eligible adult", a person sixty years of age or older **who is unable to protect his**  
9 **or her own interests or adequately perform or obtain services which are necessary to meet**  
10 **his or her essential human needs** or an adult with a [handicap] **disability**, as defined in section  
11 660.053, between the ages of eighteen and fifty-nine who is unable to protect his **or her** own  
12 interests or adequately perform or obtain services which are necessary to meet his **or her**  
13 essential human needs;

14 (6) "**Home health agency**", the same meaning as such term is defined in section  
15 **197.400, RSMo**;

16 (7) "**Home health agency employee**", a person employed by a home health agency;

17 (8) "**Home health patient**", an eligible adult who is receiving services through any  
18 **home health agency**;

19 [(6)] (9) "In-home services client", an eligible adult who is receiving services in his or  
20 her private residence through any in-home services provider agency;

21 [(7)] (10) "In-home services employee", a person employed by an in-home services  
22 provider agency;

23 [(8)] (11) "In-home services provider agency", a business entity under contract with the  
24 department or with a Medicaid participation agreement [or an agency licensed by the department  
25 of health and senior services as provided in sections 197.400 to 197.470, RSMo], which employs  
26 persons to deliver any kind of services provided for eligible adults in their private homes;

27 [(9)] (12) "Least restrictive environment", a physical setting where protective services  
28 for the eligible adult and accommodation is provided in a manner no more restrictive of an  
29 individual's personal liberty and no more intrusive than necessary to achieve care and treatment  
30 objectives;

31 [(10)] (13) "Likelihood of serious physical harm", one or more of the following:

32 (a) A substantial risk that physical harm to an eligible adult will occur because of his **or**  
33 **her** failure or inability to provide for his **or her** essential human needs as evidenced by acts or  
34 behavior which has caused such harm or which gives another person probable cause to believe  
35 that the eligible adult will sustain such harm;

36 (b) A substantial risk that physical harm will be inflicted by an eligible adult upon  
37 himself **or herself**, as evidenced by recent credible threats, acts, or behavior which has caused  
38 such harm or which places another person in reasonable fear that the eligible adult will sustain  
39 such harm;

40 (c) A substantial risk that physical harm will be inflicted by another upon an eligible  
41 adult as evidenced by recent acts or behavior which has caused such harm or which gives another  
42 person probable cause to believe the eligible adult will sustain such harm;

43 (d) A substantial risk that further physical harm will occur to an eligible adult who has  
44 suffered physical injury, neglect, sexual or emotional abuse, or other maltreatment or wasting  
45 of his **or her** financial resources by another person;

46 [(11)] **(14)** "Neglect", the failure to provide services to an eligible adult by any person,  
47 firm or corporation with a legal or contractual duty to do so, when such failure presents either  
48 an imminent danger to the health, safety, or welfare of the client or a substantial probability that  
49 death or serious physical harm would result;

50 [(12)] **(15)** "Protective services", services provided by the state or other governmental  
51 or private organizations or individuals which are necessary for the eligible adult to meet his **or**  
52 **her** essential human needs.

660.261. Upon receipt of a report that an eligible adult between the ages of eighteen and  
2 fifty-nine is facing a likelihood of serious physical harm, the department shall:

3 (1) Investigate or refer the report to appropriate law enforcement **or state** agencies; and

4 (2) Provide services or refer to local community **or state** agencies.

660.270. When the department receives a report that there **has been abuse or neglect,**  
2 **or that there otherwise** is a likelihood of serious physical harm to an eligible adult and that he  
3 **or she** is in need of protective services and the department is unable to conduct an investigation  
4 because access to the eligible adult is barred by any person, the director may petition the  
5 appropriate court for a warrant **or other order** to enter upon the described premises and  
6 investigate the report **or to produce the information**. The application for the warrant **or order**  
7 shall identify the eligible adult and the facts and circumstances which require the issuance of the  
8 warrant **or order**. The director may also seek an order to enjoin the person **from** barring access  
9 **to an eligible adult or** from interfering with the investigation. If the court finds that, based on  
10 the report and relevant circumstances and facts, probable cause exists showing that the eligible  
11 adult faces **abuse or neglect, or otherwise faces** a likelihood of serious physical harm and is in  
12 need of protective services and the director has been prevented by another person from  
13 investigating the report, the court may issue the warrant or enjoin the interference with the  
14 investigation or both.

660.300. 1. [Beginning January 1, 1993, when any physician, dentist, chiropractor,  
2 optometrist, podiatrist, intern, nurse, medical examiner, social worker, psychologist, minister,  
3 Christian Science practitioner, peace officer, pharmacist, physical therapist, in-home services  
4 owner, in-home services operator, in-home services employee, or employee of the department  
5 of social services or of the department of health and senior services or of the department of  
6 mental health] **When any adult day care worker; chiropractor; Christian Science**  
7 **practitioner; coroner; dentist; embalmer; employee of the departments of social services,**  
8 **mental health, or health and senior services; employee of a local area agency on aging or**

9 **an organized area agency on aging program; funeral director; home health agency or home**  
10 **health agency employee; hospital and clinic personnel engaged in examination, care, or**  
11 **treatment of persons; in-home services owner, provider, operator, or employee; law**  
12 **enforcement officer; long-term care facility administrator or employee; medical examiner;**  
13 **medical resident or intern; mental health professional; minister; nurse; nurse practitioner;**  
14 **optometrist; other health practitioner; peace officer; pharmacist; physical therapist;**  
15 **physician; physician's assistant; podiatrist; probation or parole officer; psychologist; or**  
16 **social worker** has reasonable cause to believe that an in-home services client has been abused  
17 or neglected, as a result of in-home services, he **or she** shall immediately report or cause a report  
18 to be made to the department. **If the report is made by a physician of the in-home services**  
19 **client, the department shall maintain contact with the physician regarding the progress of**  
20 **the investigation.**

21 **2. When a report of deteriorating physical condition resulting in possible abuse or**  
22 **neglect of an in-home services client is received by the department, the client's case**  
23 **manager and the department nurse shall be notified. The client's case manager shall**  
24 **investigate and immediately report the results of the investigation to the department nurse.**  
25 **The department may authorize the in-home services provider nurse to assist the case**  
26 **manager with the investigation.**

27 **3. If requested, local area agencies on aging shall provide volunteer training to**  
28 **those persons listed in subsection 1 of this section regarding the detection and report of**  
29 **abuse and neglect pursuant to this section.**

30 [2.] **4. Any person required in subsection 1 of this section to report or cause a report to**  
31 **be made to the department who fails to do so within a reasonable time after the act of abuse or**  
32 **neglect is guilty of a class A misdemeanor.**

33 [3.] **5. The report shall contain the names and addresses of the in-home services provider**  
34 **agency, the in-home services employee, the in-home services client, the home health agency,**  
35 **the home health agency employee, information regarding the nature of the abuse or neglect, the**  
36 **name of the complainant, and any other information which might be helpful in an investigation.**

37 [4.] **6. In addition to those persons required to report under subsection 1 of this section,**  
38 **any other person having reasonable cause to believe that an in-home services client or home**  
39 **health patient has been abused or neglected by an in-home services employee or home health**  
40 **agency employee may report such information to the department.**

41 [5. Upon receipt of a report, the department shall initiate a prompt and thorough  
42 investigation.

43 [6.] **7. If the investigation indicates possible abuse or neglect of an in-home services client**  
44 **or home health patient, the investigator shall refer the complaint together with his or her report**

45 to the department director or his **or her** designee for appropriate action. If, during the  
46 investigation or at its completion, the department has reasonable cause to believe that immediate  
47 [removal] **action** is necessary to protect the in-home services client **or home health patient** from  
48 abuse or neglect, the department or the local prosecuting attorney may, or the attorney general  
49 upon request of the department shall, file a petition for temporary care and protection of the  
50 in-home services client **or home health patient** in a circuit court of competent jurisdiction. The  
51 circuit court in which the petition is filed shall have equitable jurisdiction to issue an ex parte  
52 order granting the department authority for the temporary care and protection of the in-home  
53 services client **or home health patient**, for a period not to exceed thirty days.

54 [7.] **8.** Reports shall be confidential, as provided under section 660.320.

55 [8.] **9.** Anyone, except any person who has abused or neglected an in-home services  
56 client **or home health patient**, who makes a report pursuant to this section or who testifies in  
57 any administrative or judicial proceeding arising from the report shall be immune from any civil  
58 or criminal liability for making such a report or for testifying except for liability for perjury,  
59 unless such person acted negligently, recklessly, in bad faith, or with malicious purpose.

60 [9.] **10.** Within five working days after a report required to be made under this section  
61 is received, the person making the report shall be notified in writing of its receipt and of the  
62 initiation of the investigation.

63 [10.] **11.** No person who directs or exercises any authority in an in-home services  
64 provider agency **or home health agency** shall harass, dismiss or retaliate against an in-home  
65 services client **or home health patient**, or an in-home services employee **or a home health**  
66 **agency employee** because he or any member of his **or her** family has made a report of any  
67 violation or suspected violation of laws, standards or regulations applying to the in-home  
68 services provider agency **or home health agency** or any in-home services employee **or home**  
69 **health agency employee** which he has reasonable cause to believe has been committed or has  
70 occurred.

71 [11.] **12.** Any person who [knowingly] abuses or neglects an in-home services client  
72 [shall be guilty of a class D felony.] **or home health patient is subject to criminal prosecution**  
73 **under section 565.180, 565.182, or 565.184, RSMo. If such person is an in-home services**  
74 **employee and has been found guilty by a court, and if the supervising in-home services**  
75 **provider willfully and knowingly failed to report known abuse by such employee to the**  
76 **department, the supervising in-home services provider may be subject to administrative**  
77 **penalties of one thousand dollars per violation to be collected by the department and the**  
78 **money received therefor shall be paid to the director of revenue and deposited in the state**  
79 **treasury to the credit of the general revenue fund. Any in-home services provider which**  
80 **has had administrative penalties imposed by the department or which has had its contract**

81 terminated may seek an administrative review of the department's action pursuant to  
82 chapter 621, RSMo. Any decision of the administrative hearing commission may be  
83 appealed to the circuit court in the county where the violation occurred for a trial de novo.  
84 For purposes of this subsection, the term "violation" means a determination of guilt by a  
85 court.

86 **13. The department shall establish a quality assurance and supervision process for**  
87 **clients that requires an in-home services provider agency to conduct random visits to verify**  
88 **compliance with program standards and verify the accuracy of records kept by an in-home**  
89 **services employee.**

90 [12.] **14. The department shall maintain the employee disqualification list and place on**  
91 **the employee disqualification list the names of any persons who have been finally determined**  
92 **by the department, pursuant to section 660.315, to have recklessly, knowingly or purposely**  
93 **abused or neglected an in-home services client or home health patient while employed by an**  
94 **in-home services provider agency or home health agency. For purposes of this subsection,**  
95 **"knowingly" and "recklessly" shall have the same meanings as such terms are defined in**  
96 **section 562.016, RSMo. Any in-home services provider agency or home health agency that**  
97 **knowingly employs a person who refuses to register with the family care safety registry or**  
98 **who is listed on any of the background check lists in the family care safety registry,**  
99 **pursuant to sections 210.900 to 210.937, RSMo, is guilty of a class A misdemeanor.**

100 **15. At the time a client has been assessed to determine the level of care as required**  
101 **by rule and is eligible for in-home services, the department shall conduct a "Safe at Home**  
102 **Evaluation" to determine the client's physical, mental, and environmental capacity. The**  
103 **department shall develop the safe at home evaluation tool by rule in accordance with**  
104 **chapter 536, RSMo. The purpose of the safe at home evaluation is to assure that each**  
105 **client has the appropriate level of services and professionals involved in the client's care.**  
106 **The plan of service or care for each in-home services client shall be authorized by a nurse.**  
107 **The department may authorize the licensed in-home services nurse, in lieu of the**  
108 **department nurse, to conduct the assessment of the client's condition and to establish a**  
109 **plan of services or care. The department may use the expertise, services, or programs of**  
110 **other departments and agencies on a case-by-case basis to establish the plan of service or**  
111 **care. The department may, as indicated by the safe at home evaluation, refer any client**  
112 **to a mental health professional, as defined in 9 CSR 30-4.030, for evaluation and treatment**  
113 **as necessary.**

114 **16. Authorized nurse visits shall occur at least twice annually to assess the client**  
115 **and the client's plan of services. The provider nurse shall report the results of his or her**  
116 **visits to the client's case manager. If the provider nurse believes that the plan of service**

requires alteration, the department shall be notified and the department shall make a client evaluation. All authorized nurse visits shall be reimbursed to the in-home services provider. All authorized nurse visits shall be reimbursed outside of the nursing home cap for in-home services clients whose services have reached one hundred percent of the average statewide charge for care and treatment in an intermediate care facility, provided that the services have been pre-authorized by the department.

17. All in-home services clients shall be advised of their rights by the department at the initial evaluation. The rights shall include, but not be limited to, the right to call the department for any reason, including dissatisfaction with the provider or services. The department shall establish a process to receive such nonabuse and neglect calls other than the elder abuse and neglect hotline.

18. Subject to appropriations, all nurse visits authorized in sections 660.250 to 660.300 shall be reimbursed to the in-home services provider agency.

660.305. 1. Any person having reasonable cause to believe that a misappropriation of an in-home services client's property or funds, or the falsification of any documents verifying service delivery to the in-home services client has occurred, may report such information to the department.

2. For each report the [division] department shall attempt to obtain the names and addresses of the in-home services provider agency, the in-home services employee, the in-home services client, information regarding the nature of the misappropriation or falsification, the name of the complainant, and any other information which might be helpful in an investigation.

3. Any in-home services provider agency or in-home services employee who puts to his or her own use or the use of the in-home services provider agency or otherwise diverts from the in-home services client's use any personal property or funds of the in-home services client, or falsifies any documents for service delivery, [shall be] is guilty of a class A misdemeanor.

4. Upon receipt of a report, the department shall immediately initiate an investigation and report information gained from such investigation to appropriate law enforcement authorities.

5. If the investigation indicates probable misappropriation of property or funds, or falsification of any documents for service delivery of an in-home services client, the investigator shall refer the complaint together with [his] the investigator's report to the department director or [his] the director's designee for appropriate action.

6. Reports shall be confidential, as provided under section 660.320.

7. Anyone, except any person participating in or benefiting from the misappropriation of funds, who makes a report pursuant to this section or who testifies in any administrative or judicial proceeding arising from the report shall be immune from any civil or criminal liability

24 for making such a report or for testifying except for liability for perjury, unless such person acted  
25 negligently, recklessly, in bad faith, or with malicious purpose.

26 8. Within five working days after a report required to be made under this section is  
27 received, the person making the report shall be notified in writing of its receipt and of the  
28 initiation of the investigation.

29 9. No person who directs or exercises any authority in an in-home services provider  
30 agency shall harass, dismiss or retaliate against an in-home services client or employee because  
31 he **or she** or any member of his **or her** family has made a report of any violation or suspected  
32 violation of laws, ordinances or regulations applying to the in-home services provider agency or  
33 any in-home services employee which he **or she** has reasonable cause to believe has been  
34 committed or has occurred.

35 10. The department shall maintain the employee disqualification list and place on the  
36 employee disqualification list the names of any persons who **are or have been employed by an**  
37 **in-home service provider agency and who** have been finally determined by the department to,  
38 pursuant to section 660.315, have misappropriated any property or funds, or falsified any  
39 documents for service delivery of an in-home services client **and who came to be known to the**  
40 **person, directly, or indirectly** while employed by an in-home services provider agency.

**660.310. 1. Notwithstanding any other provision of law, if the department of health  
2 and senior services proposes to deny, suspend, place on probation, or terminate an in-home  
3 services provider agency contract, the department of health and senior services shall serve  
4 upon the applicant or contractor written notice of the proposed action to be taken. The  
5 notice shall contain a statement of the type of action proposed, the basis for it, the date the  
6 action will become effective, and a statement that the applicant or contractor shall have  
7 thirty days from the date of mailing or delivery of the notice to file a complaint requesting  
8 a hearing before the administrative hearing commission. The administrative hearing  
9 commission may consolidate an applicant's or contractor's complaint with any proceeding  
10 before the administrative hearing commission filed by such contractor or applicant  
11 pursuant to subsection 3 of section 208.156, RSMo, involving a common question of law or  
12 fact. Upon the filing of the complaint, the provisions of sections 621.110, 621.120, 621.125,  
13 621.135, and 621.145, RSMo, shall apply. With respect to cases in which the department  
14 has denied a contract to an in-home services provider agency, the administrative hearing  
15 commission shall conduct a hearing to determine the underlying basis for such denial.  
16 However, if the administrative hearing commission finds that the contract denial is  
17 supported by the facts and the law, the case need not be returned to the department. The  
18 administrative hearing commission's decision shall constitute affirmation of the  
19 department's contract denial.**



20           **2. The department of health and senior services may issue letters of censure or**  
21 **warning without formal notice or hearing.**

22           **3. The administrative hearing commission may stay the suspension or termination**  
23 **of an in-home services provider agency's contract, or the placement of the contractor on**  
24 **probation, pending the commission's findings and determination in the cause, upon such**  
25 **conditions, with or without the agreement of the parties, as the commission deems**  
26 **necessary and appropriate, including the posting of bond or other security except that the**  
27 **commission shall not grant a stay, or if a stay has already been entered shall set aside its**  
28 **stay, unless the commission finds that the contractor has established that servicing the**  
29 **department's clients pending the commission's final determination would not present an**  
30 **imminent danger to the health, safety, or welfare of any client or a substantial probability**  
31 **that death or serious physical harm would result. The commission may remove the stay**  
32 **at any time that it finds that the contractor has violated any of the conditions of the stay.**  
33 **Such stay shall remain in effect, unless earlier removed by the commission, pending the**  
34 **decision of the commission and any subsequent departmental action at which time the stay**  
35 **shall be removed. In any case in which the department has refused to issue a contract, the**  
36 **commission shall have no authority to stay or to require the issuance of a contract pending**  
37 **final determination by the commission.**

38           **4. Stays granted to contractors by the administrative hearing commission shall, as**  
39 **a condition of the stay, require at a minimum that the contractor under the stay operate**  
40 **under the same contractual requirements and regulations as are in effect, from time to**  
41 **time, as are applicable to all other contractors in the program.**

42           **5. The administrative hearing commission shall make its final decision based upon**  
43 **the circumstances and conditions as they existed at the time of the action of the department**  
44 **and not based upon circumstances and conditions at the time of the hearing or decision of**  
45 **the commission.**

46           **6. In any proceeding before the administrative hearing commission pursuant to this**  
47 **section, the burden of proof shall be on the contractor or applicant seeking review.**

48           **7. Any person, including the department, aggrieved by a final decision of the**  
49 **administrative hearing commission may seek judicial review of such decision as provided**  
50 **in section 621.145, RSMo.**

          660.315. 1. After an investigation and a determination has been made to place a person's  
2 name on the employee disqualification list, that person shall be notified in writing mailed to his  
3 **or her** last known address that:

4           (1) An allegation has been made against [him] **the person**, the substance of the  
5 allegation and that an investigation has been conducted which tends to substantiate the

6 allegation;

7 (2) [His] **The person's** name will be included in the employee disqualification list of the  
8 department;

9 (3) The consequences of being so listed including the length of time to be listed; and

10 (4) [His] **The person's** rights and the procedure to challenge the allegation.

11 2. If no reply has been received within thirty days of mailing the notice, the department  
12 may include the name of such person on its list. The length of time the person's name shall  
13 appear on the employee disqualification list shall be determined by the director or [his] **the**  
14 **director's** designee, based upon the criteria contained in subsection 9 of this section.

15 3. If the person so notified wishes to challenge the allegation, [he] **such person** may file  
16 an application for a hearing with the department. The department shall grant the application  
17 within thirty days after receipt by the department and set the matter for hearing, or the department  
18 shall notify the applicant that, after review, the allegation has been held to be unfounded and the  
19 applicant's name will not be listed.

20 4. If a person's name is included on the employee disqualification list without notice by  
21 the department, such person may file a request with the department for removal of the name or  
22 for a hearing. Within thirty days after receipt of the request, the department shall either remove  
23 the name from the list or grant a hearing and set a date therefor.

24 5. Any hearing shall be conducted in the county of the person's residence by the director  
25 of the [division of aging or his] **department or the director's** designee. The provisions of  
26 chapter 536, RSMo, for a contested case except those provisions or amendments which are in  
27 conflict with this section, shall apply to and govern the proceedings contained in this section and  
28 the rights and duties of the parties involved. The person appealing such an action shall be  
29 entitled to present evidence, pursuant to the provisions of chapter 536, RSMo, relevant to the  
30 allegations.

31 6. Upon the record made at the hearing, the director of the [division of aging]  
32 **department or the director's designee** shall determine all questions presented and shall  
33 determine whether the person shall be listed on the employee disqualification list. The director  
34 of the [division of aging] **department or the director's designee** shall clearly state the reasons  
35 for his **or her** decision and shall include a statement of findings of fact and conclusions of law  
36 pertinent to the questions in issue.

37 7. A person aggrieved by the decision following the hearing shall be informed of his **or**  
38 **her** right to seek judicial review as provided under chapter 536, RSMo. If the person fails to  
39 appeal the director's findings, those findings shall constitute a final determination that the person  
40 shall be placed on the employee disqualification list.

41 8. A decision by the director shall be inadmissible in any civil action brought against a

42 facility or the in-home services provider agency and arising out of the facts and circumstances  
43 which brought about the employment disqualification proceeding, unless the civil action is  
44 brought against the facility or the in-home services provider agency by the department of [social  
45 services] **health and senior services** or one of its divisions.

46 9. The length of time the person's name shall appear on the employee disqualification  
47 list shall be determined by the director [or his] **of the department of health and senior services**  
48 **or the director's** designee, based upon the following:

49 (1) Whether the person acted recklessly[,] **or** knowingly [or purposely], as defined in  
50 chapter 562, RSMo;

51 (2) The degree of the [infliction of] physical, sexual, or emotional injury or harm; or the  
52 degree of the imminent danger to the health, safety or welfare of a resident or in-home services  
53 client;

54 (3) The degree of misappropriation of the property or funds, or falsification of any  
55 documents for service delivery of an in-home services client;

56 (4) Whether the person has previously been listed on the employee disqualification list;

57 (5) Any mitigating circumstances; [and]

58 (6) **Any aggravating circumstances; and**

59 (7) Whether alternative sanctions resulting in conditions of continued employment are  
60 appropriate in lieu of placing a person's name on the employee disqualification list. Such  
61 conditions of employment may include, but are not limited to, additional training and employee  
62 counseling. Conditional employment shall terminate upon the expiration of the designated  
63 length of time and the person's submitting documentation which fulfills the [division's]  
64 **department of health and senior services'** requirements.

65 10. The removal of any person's name from the list under this section shall not prevent  
66 the director from keeping records of all acts finally determined to have occurred under this  
67 section.

68 11. The department shall provide the list maintained pursuant to this section to other  
69 state departments upon request and to any person, corporation or association who:

70 (1) Is licensed as an operator under chapter 198, RSMo;

71 (2) Provides in-home services under contract with the department;

72 (3) Employs nurses and nursing assistants for temporary or intermittent placement in  
73 health care facilities;

74 (4) Is approved by the department to issue certificates for nursing assistants training; or

75 (5) Is an entity licensed under chapter 197, RSMo.

76 The department shall inform any person listed above who inquires of the [division of aging]  
77 **department** whether or not a particular name is on the list. The [division] **department** may

78 require that the request be made in writing.

79 12. No person, corporation or association who received the employee disqualification  
80 list under subsection 11 of this section shall knowingly employ any person who is on the  
81 employee disqualification list. Any person, corporation or association who received the  
82 employee disqualification list under subsection 11 of this section, or any person responsible for  
83 providing health care service, who declines to employ or terminates a person whose name is  
84 listed in this section shall be immune from suit by that person or anyone else acting for or in  
85 behalf of that person for the failure to employ or for the termination of the person whose name  
86 is listed on the employee disqualification list.

87 13. **Any employer who is required to discharge an employee because the employee**  
88 **was placed on a disqualification list maintained by the department of health and senior**  
89 **services after the date of hire shall not be charged for unemployment insurance benefits**  
90 **based on wages paid to the employee for work prior to the date of discharge, pursuant to**  
91 **section 288.100, RSMo.**

92 14. Any person who has been listed on the employee disqualification list may request  
93 that the director remove his **or her** name from the employee disqualification list. The request  
94 shall be written and may not be made more than once every twelve months. The request will be  
95 granted by the director upon a clear showing, by written submission only, that the person will  
96 not commit additional acts of abuse, neglect, misappropriation of the property or funds, or the  
97 falsification of any documents of service delivery to an in-home services client. The director  
98 may make conditional the removal of a person's name from the list on any terms that the director  
99 deems appropriate, and failure to comply with such terms may result in the person's name being  
100 relisted. The director's determination of whether to remove the person's name from the list is not  
101 subject to appeal.

660.317. 1. For the purposes of this section, the term "provider" means any person,  
2 corporation or association who:

3 (1) Is licensed as an operator pursuant to chapter 198, RSMo;

4 (2) Provides in-home services under contract with the department;

5 (3) Employs nurses or nursing assistants for temporary or intermittent placement in  
6 health care facilities; [or]

7 (4) Is an entity licensed pursuant to chapter 197, RSMo;

8 (5) Is a public or private facility, day program, residential facility or specialized service  
9 operated, funded or licensed by the department of mental health; **or**

10 **(6) Is a licensed adult day care provider.**

11 2. For the purpose of this section "patient or resident" has the same meaning as such term  
12 is defined in section 43.540, RSMo.

13           3. [Beginning August 28, 1997, not later than two working days of hiring any person for]  
14 **Prior to allowing any person who has been hired as** a full-time, part-time or temporary  
15 position to have contact with any patient or resident the provider shall, or in the case of  
16 temporary employees hired through **or contracted for** an employment agency, the employment  
17 agency shall prior to sending a temporary employee to a provider:

18           (1) Request a criminal background check as provided in section 43.540, RSMo.  
19 Completion of an inquiry to the highway patrol for criminal records that are available for  
20 disclosure to a provider for the purpose of conducting an employee criminal records background  
21 check shall be deemed to fulfill the provider's duty to conduct employee criminal background  
22 checks pursuant to this section; except that, completing the inquiries pursuant to this subsection  
23 shall not be construed to exempt a provider from further inquiry pursuant to common law  
24 requirements governing due diligence. **If an applicant has not resided in this state for five**  
25 **consecutive years prior to the date of his or her application for employment, the provider**  
26 **shall request a nationwide check for the purpose of determining if the applicant has a prior**  
27 **criminal history in other states. The fingerprint cards and any required fees shall be sent**  
28 **to the highway patrol's criminal records divisions. The first set of fingerprints shall be**  
29 **used for searching the state repository of criminal history information. If no identification**  
30 **is made, the second set of fingerprints shall be forwarded to the Federal Bureau of**  
31 **Investigation, Identification Division, for the searching of the federal criminal history files.**  
32 **The patrol shall notify the submitting state agency of any criminal history information or**  
33 **lack of criminal history information discovered on the individual. The provisions relating**  
34 **to applicants for employment who have not resided in this state for five consecutive years**  
35 **shall apply only to persons who have no employment history with a licensed Missouri**  
36 **facility during that five year period. Notwithstanding the provisions of section 610.120,**  
37 **RSMo, all records related to any criminal history information discovered shall be**  
38 **accessible and available to the provider making the record request; and**

39           (2) Make an inquiry to the department of [social services] **health and senior services,**  
40 whether the person is listed on the employee disqualification list as provided in section 660.315.

41           4. When the provider requests a criminal background check pursuant to section [43.530]  
42 **43.540, RSMo, the requesting entity may require that the applicant reimburse the provider for**  
43 **the cost of such record check. When a provider requests a nationwide criminal background**  
44 **check pursuant to subdivision (1) of subsection 3 of this section, the total cost to the**  
45 **provider of any background check required pursuant to this section shall not exceed five**  
46 **dollars which shall be paid to the state. State funding and the obligation of a provider to**  
47 **obtain a nationwide criminal background check shall be subject to the availability of**  
48 **appropriations.**

49           5. An applicant for a position to have contact with patients or residents of a provider  
50 shall:

51           (1) Sign a consent form as required by section 43.540, RSMo, so the provider may  
52 request a criminal records review;

53           (2) Disclose the applicant's criminal history. For the purposes of this subdivision  
54 "criminal history" includes any conviction or a plea of guilty to a misdemeanor or felony charge  
55 and shall include any suspended imposition of sentence, any suspended execution of sentence  
56 or any period of probation or parole; and

57           (3) Disclose if the applicant is listed on the employee disqualification list as provided  
58 in section 660.315.

59           6. An applicant who knowingly fails to disclose his **or her** criminal history as required  
60 in subsection 5 of this section is guilty of a class A misdemeanor. A provider is guilty of a class  
61 A misdemeanor if the provider knowingly hires **or retains** a person to have contact with patients  
62 or residents and the person has been convicted of, pled guilty to or nolo contendere in this state  
63 or any other state or has been found guilty of a crime, which if committed in Missouri would be  
64 a class A or B felony violation of chapter 565, 566 or 569, RSMo, or any violation of subsection  
65 3 of section 198.070, RSMo, or section 568.020, RSMo.

66           7. The highway patrol shall examine whether protocols can be developed to allow a  
67 provider to request a statewide fingerprint criminal records review check through local law  
68 enforcement agencies.

69           8. A provider may use a private investigatory agency rather than the highway patrol to  
70 do a criminal history records review check, and alternatively, the applicant pays the private  
71 investigatory agency such fees as the provider and such agency shall agree.

72           9. The department of [social services] **health and senior services** shall promulgate rules  
73 and regulations to waive the hiring restrictions pursuant to this section for good cause. For  
74 purposes of this section, "good cause" means the department has made a determination by  
75 examining the employee's prior work history and other relevant factors that such employee does  
76 not present a risk to the health or safety of residents.

660.320. **1.** Reports confidential under section 198.070, RSMo, and sections 660.300  
2 to 660.315 shall not be deemed a public record and shall not be subject to the provisions of  
3 section 109.180, RSMo, or chapter 610, RSMo. The name of the complainant or any person  
4 mentioned in the reports shall not be disclosed unless:

5           (1) The complainant, resident or the in-home services client mentioned agrees to  
6 disclosure of his **or her** name;

7           (2) The department determines that disclosure is necessary in order to prevent further  
8 abuse, neglect, misappropriation of property or funds, or falsification of any documents verifying

9 service delivery to an in-home services client;

10 (3) Release of a name is required for conformance with a lawful subpoena;

11 (4) Release of a name is required in connection with a review by the administrative  
12 hearing commission in accordance with section 198.039, RSMo;

13 (5) The department determines that release of a name is appropriate when forwarding  
14 a report of findings of an investigation to a licensing authority; or

15 (6) Release of a name is requested by the division of family services for the purpose of  
16 licensure under chapter 210, RSMo.

17 **2. The department shall, upon request, provide to the division of employment**  
18 **security within the department of labor and industrial relations copies of the investigative**  
19 **reports that led to an employee being placed on the disqualification list.**

**660.321. Notwithstanding any other provision of law, the department shall not**  
2 **disclose personally identifiable medical, social, personal, or financial records of any eligible**  
3 **adult being served by the division of senior services except when disclosed in a manner that**  
4 **does not identify the eligible adult, or when ordered to do so by a court of competent**  
5 **jurisdiction. Such records shall be accessible without court order for examination and**  
6 **copying only to the following persons or offices, or to their designees:**

7 (1) **The department or any person or agency designated by the department for such**  
8 **purposes as the department may determine;**

9 (2) **The attorney general, to perform his or her constitutional or statutory duties;**

10 (3) **The department of mental health for residents placed through that department,**  
11 **to perform its constitutional or statutory duties;**

12 (4) **Any appropriate law enforcement agency, to perform its constitutional or**  
13 **statutory duties;**

14 (5) **The eligible adult, his or her legal guardian or any other person designated by**  
15 **the eligible adult; and**

16 (6) **The department of social services for individuals who receive Medicaid benefits,**  
17 **to perform its constitutional or statutory duties.**

**660.603. 1. There is hereby established within the [division of aging] department of**  
2 **health and senior services the "Office of State Ombudsman for Long-Term Care Facility**  
3 **Residents", for the purpose of helping to assure the adequacy of care received by residents of**  
4 **long-term care facilities and to improve the quality of life experienced by them, in accordance**  
5 **with the federal Older Americans Act, 42 U.S.C. 3001, et seq.**

6 **2. The office shall be administered by the state ombudsman, who shall devote his entire**  
7 **time to the duties of his position.**

8 **3. The office shall establish and implement procedures for receiving, processing,**

9 responding to, and resolving complaints made by or on behalf of residents of long-term care  
10 facilities relating to action, inaction, or decisions of providers, or their representatives, of  
11 long-term care services, of public agencies or of social service agencies, which may adversely  
12 affect the health, safety, welfare or rights of such residents.

13 4. The [division] **department** shall establish and implement procedures for resolution  
14 of complaints. The ombudsman or representatives of the office shall have the authority to:

15 (1) Enter any long-term care facility and have access to residents of the facility at a  
16 reasonable time and in a reasonable manner. The ombudsman shall have access to review  
17 resident records, if given permission by the resident or the resident's legal guardian. Residents  
18 of the facility shall have the right to request, deny, or terminate visits with an ombudsman;

19 (2) Make the necessary inquiries and review such information and records as the  
20 ombudsman or representative of the office deems necessary to accomplish the objective of  
21 verifying these complaints.

22 5. The office shall acknowledge complaints, report its findings, make recommendations,  
23 gather and disseminate information and other material, and publicize its existence.

24 6. The ombudsman may recommend to the relevant governmental agency changes in the  
25 rules and regulations adopted or proposed by such governmental agency which do or may  
26 adversely affect the health, safety, welfare, or civil or human rights of any resident in a facility.  
27 The office shall analyze and monitor the development and implementation of federal, state and  
28 local laws, regulations and policies with respect to long-term care facilities and services in the  
29 state and shall recommend to the [division] **department** changes in such laws, regulations and  
30 policies deemed by the office to be appropriate.

31 7. The office shall promote community contact and involvement with residents of  
32 facilities through the use of volunteers and volunteer programs directed by the regional  
33 ombudsman coordinators.

34 8. The office shall develop and establish by regulation of the [division] **department**  
35 statewide policies and standards for implementing the activities of the ombudsman program,  
36 including the qualifications and the training of regional ombudsman coordinators and  
37 ombudsman volunteers.

38 9. The office shall develop and propose programs for use, training and coordination of  
39 volunteers in conjunction with the regional ombudsman coordinators and may:

40 (1) Establish and conduct recruitment programs for volunteers;

41 (2) Establish and conduct training seminars, meetings and other programs for volunteers;

42 and

43 (3) Supply personnel, written materials and such other reasonable assistance, including  
44 publicizing their activities, as may be deemed necessary.



45       **10. The regional ombudsman coordinators and ombudsman volunteers shall have**  
46 **the authority to report instances of abuse and neglect to the ombudsman hotline operated**  
47 **by the department.**

48       **11. If the regional ombudsman coordinator or volunteer finds that a nursing home**  
49 **administrator is not willing to work with the ombudsman program to resolve complaints,**  
50 **the state ombudsman shall be notified. The department shall establish procedures by rule**  
51 **for implementation of this subsection.**

52       [10.] **12.** The office shall prepare and distribute to each facility written notices which set  
53 forth the address and telephone number of the office, a brief explanation of the function of the  
54 office, the procedure to follow in filing a complaint and other pertinent information.

55       [11.] **13.** The administrator of each facility shall ensure that such written notice is given  
56 to every resident or [his] **the resident's** guardian upon admission to the facility and to every  
57 person already in residence, or to his guardian. The administrator shall also post such written  
58 notice in a conspicuous, public place in the facility in the number and manner set forth in the  
59 regulations adopted by the [division] **department.**

60       [12.] **14.** The office shall inform residents, their guardians or their families of their rights  
61 and entitlements under state and federal laws and rules and regulations by means of the  
62 distribution of educational materials and group meetings.

          [197.725. 1. The department of health and senior services shall establish  
2 procedures for the licensing of necessary provider hospitals. For purposes of this  
3 section, "necessary provider hospital" means an existing hospital, as defined in  
4 section 197.020, that is located outside a Standard Metropolitan Area and that:

5           (1) Provides inpatient care to ill or injured persons prior to their  
6 transportation to a hospital or provides inpatient medical care to persons needing  
7 such care for a period of no longer than ninety-six hours with exceptions as  
8 authorized by federal Medicare law and regulations;

9           (2) May have up to fifteen acute care inpatient beds and may participate in  
10 the federal swing-bed program for up to ten additional beds;

11           (3) Makes available emergency services on a twenty-four-hour basis; and

12           (4) Is required to have formal agreements with at least one hospital and other  
13 appropriate providers for such services as patient referral and transfer,  
14 communication systems, provision of emergency and nonemergency transportation,  
15 and backup medical and emergency services.

16       2. The department of health and senior services may promulgate rules and  
17 regulations to implement the provisions of this section. No rule or portion of a rule  
18 promulgated pursuant to the provisions of this section shall become effective unless  
19 it has been promulgated pursuant to chapter 536, RSMo.]

          Section B. Because of the need to recalculate Medicaid rates for Missouri facilities, the  
2 enactment of section 208.225 of section A of this act is deemed necessary for the immediate

3 preservation of the public health, welfare, peace and safety, and is hereby declared to be an  
4 emergency act within the meaning of the constitution, and the enactment of section 208.225 of  
5 section A of this act shall be in full force and effect upon its passage and approval or July 1,  
6 2003, whichever later occurs.